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Contents

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force Ratings for Retention—Longer Period to Credit Ratings; Clarification of Assignment Rights; Correction

AGENCY: Office of Personnel Management.

ACTION: Correcting amendments.

SUMMARY: This document corrects an error made in a final rule under 5 CFR part 351 published December 17, 1991 (56 FR 65415). A revision was made without reference to an amendment published on September 6, 1991 (56 FR 43995). This correction amends the December 17, 1991, final rule to conform to the earlier change.

EFFECTIVE DATE: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Edward P. McHugh, (202) 606–0960.

SUPPLEMENTARY INFORMATION: On December 17, 1991, OPM published a final rule under 5 CFR part 351 that revised § 351.803(b). This revision was made without reference to an earlier revision published on September 6, 1991, which redesignated § 351.803 as § 351.802 and made a revision to paragraph (b). Correcting amendments are made to §§ 351.802(b) and 351.803(b) below.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, 5 CFR part 351 is corrected by making the following correcting amendments:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. In § 351.802, paragraph (b) is revised to read as follows:

§ 351.802 Content of notice.

* * * * *

(b) The employee's competitive area, competitive level, subgroup, service date, and annual performance ratings of record received during the last 4 years as provided in § 351.504 of this part;

* * * * *

3. In § 351.803, paragraph (b) is revised to read as follows:

§ 351.803 Notice of eligibility for reemployment and other placement assistance.

* * * * *

(b) When 50 or more employees in a competitive area receive separation notices under this part, the agency must provide notification of the action, at the same time it issues specific notices of separation to employees, to:

(1) The State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act;

(2) The chief elected official of local government(s) within which these separations will occur; and

(3) OPM.

* * * * *

[FR Doc. 92–17307 Filed 7–22–92; 8:45 am]
BILLING CODE 6325–01–M

5 CFR Part 842

RIN 3206–AE15

Federal Employees Retirement System—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting, with amendments, its interim regulations governing the special retirement provisions for law enforcement officers, firefighters, and air traffic controllers employed under the Federal Employees Retirement System (FERS). These final regulations implement certain statutory changes enacted since the current regulations were issued; correct or clarify certain provisions; and put into effect a limited authority for Executive department heads to delegate the authority to determine that a position qualifies as a law enforcement officer or firefighter position.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Landers, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Sections 8412 (d) and (e) of title 5, United States Code, provide immediate and enhanced retirement benefits for FERS employees who (1) have attained age 50 and completed 20 years of service as a law enforcement officer, firefighter, or air traffic controller; or (2) have completed 25 years of such service (regardless of age). Employees who qualify as law enforcement officers (5 U.S.C. 8401(17)), firefighters (5 U.S.C. 8401(14)), or air traffic controllers (5 U.S.C. 2109) are subject to special rules regarding employee deductions and agency contributions (5 U.S.C. 8422 and 8423). They are also subject to mandatory separation based on age (5 U.S.C. 8425).

Note: Public Law 101–428, enacted October 15, 1990, extended benefits under 5 U.S.C. 8412(d) to members of the Capitol Police, not by including them in the definition of "law enforcement officer," but by identifying them separately in 5 U.S.C. 8412(d). OPM's regulations at 5 CFR part 842, subpart H, which are the focus of this rulemaking, do not address members of the Capitol Police.

On January 16, 1987, we published interim regulations (at 52 FR 2068) to implement the special retirement law provisions for FERS employees serving as law enforcement officers, firefighters, and air traffic controllers. Those regulations provided necessary definitions, standards and procedures, and also delegated certain authorities to employing agencies. We are now adopting the interim regulations, with changes, as final rules. The changes are necessary to implement certain statutory changes, correct or clarify certain provisions, and to revise a particular delegation limit.

The remainder of this supplementary information section is divided into four parts. The first part addresses comments on the interim regulations. The second part discusses regulatory changes required by law changes. The third part explains the regulatory changes made to correct or clarify certain provisions. The fourth part describes other changes being made in the interim regulations.

1. Comments on Interim Regulations

OPM received written comments from various Federal agencies, employee associations, and individuals regarding the January 16, 1987, interim regulations on FERS law enforcement officers, firefighters, and air traffic controllers. We have carefully considered these comments, as discussed below.

Maximum Entry Age

A number of commenters objected to the requirement that maximum entry ages be established for rigorous law enforcement officer and firefighter positions. (See § 842.804(a).) Several commenters expressed concern that agencies had hired FERS employees into rigorous positions for which they had not yet established a maximum entry age; a grace period was suggested. One agency asserted that the statutory requirement that law enforcement officer and firefighter positions be limited to "young" individuals was satisfied by having a mandatory separation age. This is not true since the mandatory separation age is triggered only if an employee has acquired 20 years of law enforcement officer or firefighter service.

We continue to believe that carrying out the law requires that maximum entry ages be established for all rigorous law enforcement officer and firefighter positions. At the same time, we recognize that there was an unavoidable lag between the promulgation of the requirement and actual establishment of the maximum entry ages in many agencies. As explained in part 2, the FERS law was amended to provide some flexibility in application of the maximum entry age requirement. (See discussion of section 103(a)(2) of Public Law 100–238 in part 2.)

Minimum Physical Qualifications

Some commenters were concerned about the requirement that minimum physical qualifications be established for rigorous law enforcement officer and firefighter positions. Some were confused as to whether the regulations required rigorous positions to have both maximum entry age limits and physical qualifications. The law states that employment opportunities in these positions are to be "limited to young and physically vigorous individuals." This language clearly implies use of both maximum entry age limits and physical qualifications. The interim regulations noted these requirements in § 842.804(a). This section specifically provides that physical qualifications are to be determined by the agency head based on the personnel management needs of the agency. The physical qualifications may consist of either physical requirements or medical standards or a mix of the two, as long as the set of qualifications adopted ensures that the position in question is limited to physically vigorous individuals. Some commenters were concerned that agencies had hired FERS employees into rigorous positions for which they had not yet established physical qualifications. As discussed above relative to maximum entry ages, this problem was addressed by a subsequent law change. (See discussion of section 103(a)(2) of Public Law 100–238 in part 2.)

Definition of Primary Duties

Some commenters objected to the definition of the term "primary duties" as set forth in § 842.802—in particular, the statement that, in general, if an employee spends an average of at least 50 percent of his or her time performing a duty or group of duties, they can be considered his or her primary duties. A parallel statement was added to the CSRS regulations on law enforcement officers and firefighters on December 5, 1990, and this issue was fully addressed in the accompanying supplementary information (see 55 FR 50153). As explained there, the 50-percent standard is merely an optional substitute standard—in effect, a short-cut method of determining that an employee meets the regular definitional requirements without the need for further evidence or support. If, in a rare instance, an employee does not satisfy the 50-percent standard but does satisfy the regular definition requirements (duties are paramount, etc.), the employee's duties will qualify as primary duties.

Experience Requirement for Administrative Positions

A number of commenters objected to the regulatory requirement that an administrative secondary position (in which an employee can continue special retirement coverage) must be one where actual experience in the law enforcement or firefighting field is a mandatory prerequisite. (See the definition of "secondary position" in § 842.802.) Some preferred the old language used in the parallel CSRS regulations: "basic qualification" rather than "mandatory prerequisite." OPM's longstanding policy in administering the CSRS has been that an administrative secondary position must require past experience in a primary position. Coverage of administrative staff under the early retirement plan is justified only if it is necessary to fill the administrative positions with employees covered under the plan, who, if not allowed to continue the special retirement coverage, would not be willing to accept administrative posts. Where past primary position experience is not needed in the administrative position, the employing agency's ability to staff its administrative functions is enhanced because it can hire from sources other than primary positions. An administrative position that does not require primary experience is not really in the law enforcement officer or firefighter career track, and it was the intent of the law that the special early retirement benefit be reserved for individuals remaining on that career track. The term "basic qualification" has consistently been interpreted by OPM to mean a fundamental or essential requirement; however, since some agencies appeared to be confused about the term's meaning, we sought to clarify our policy by using the term "mandatory prerequisite." This change was made in the CSRS regulations governing law enforcement officers and firefighters on December 17, 1987 (see 52 FR 47893). The regulation provided some liberalization in the policy by expressly allowing for the experience requirement to be satisfied by equivalent work outside the Federal Government. The FERS interim regulations simply establish a parallel rule for FERS law enforcement officers and firefighters.

It should be noted that, on rare occasions, a position may qualify for approval as an administrative secondary position even though the official position description does not identify rigorous experience as a mandatory prerequisite. This would be appropriate if, at the time the position is being filled, there is a valid organizational need that mandates filling the administrative position only with someone having rigorous experience; in this case, the position would be deemed to meet the mandatory prerequisite requirement during the tenure of the individual hired to meet that need. As a general rule, however, position descriptions should be revised to reflect such an organizational need.

Continuous Secondary Coverage Requirement

A number of commenters objected to § 842.803(b)(iii), which required that an employee be continuously employed in a secondary position without a break in service (excluding involuntary separations) after transferring from a rigorous position. A parallel requirement is found in the CSRS regulations published on December 17, 1987, and

this issue was addressed in the accompanying supplementary information (see 52 FR 47893). The continuous secondary coverage requirement supports a basic purpose of the early retirement provision which is to retain young and vigorous employees in a special Federal career track. We note that employees in secondary positions continue to be subject to mandatory separation (at age 55 for firefighters and at age 57 for law enforcement officers). Since mandatory separation is triggered only when an employee has 20 years of law enforcement officer or firefighter service, it is reasonable to require employees to remain continuously in the Federal law enforcement or firefighting career field as a condition of secondary coverage. Many of the concerns raised by agencies about this requirement—for example, the need for cross training and career development—can be addressed by use of details and temporary promotions. Other situations can be addressed by putting employees in a leave-without-pay status.

Redelegation of Approval Authority

Several commenters objected to the prohibition on agency head redelegation of the authority to approve positions as law enforcement officer or firefighter positions. In addition, representatives of the Inspector General commmunity expressed concern about possible interference with their independence if agency heads had authority to make decisions regarding positions in their offices; they requested to be designated as "agency heads" for purposes of the regulations. As we explained in the supplementary information accompanying the interim regulations, we prohibited redelegation of the position approval authority because of the potentially significant impact of these decisions on an agency's budget. In addition, this redelegation limit ensures agency-wide consistency in coverage determinations. We continue to believe that the need for fiscal descipline and consistency argues for having this authority reside in a single high-level official who has responsibility for both personnel and budgetary matters for the entire agency. However, as explained in part 4 of this supplementary information, we are amending the regulations to allow Executive department heads to delegate position approval authority to a single headquarters-level official who is a direct subordinate.

OMP Oversight

Several commenters objected to § 842.808, which sets forth the possibility that OPM may overrule an agency decision to approve a law enforcement officer or firefighter position. Some agencies requested that there be a time limit on such OPM reversals or that the reversals be prospective only. If OPM determines that an agency approval is not valid under the law or regulations, it must order a retroactive correction. While agency decisions will be given due deference within the bounds of the law and regulations, agency errors cannot create statutory rights that do not otherwise exist. (See *OPM* v. *Richmond*, 110 S.Ct. 2465 (1990).) In any event, OPM's oversight role is an inherent part of its underlying statutory authority to make these determinations and its continuing responsibility to determine whether continued delegation of this authority is appropriate.

2. Revisions Required Due to Changes in Law

Public Law 100–238, enacted January 8, 1988, made a number of technical corrections to the FERS Act, including several changes to the retirement law provisions respecting law enforcement officers and firefighters. These changes require corresponding changes in the regulations.

Section 103(c) of Public Law 100–238 reduced from 10 years to 3 years the period of time a law enforcement officer or firefighter must serve in a rigorous position before transferring to a secondary position (that is, a supervisory or administrative position) with entitlement to continue his or her coverage under the special FERS provisions for law enforcement officers and firefighters. This statutory change was made effective retroactive to January 1, 1987. Accordingly, we are revising § 842.803(b)(ii) of the interim regulations, as well as several references in § 842.809, to reflect the change.

Section 103(a)(2) of Public Law 100–238 amended the definitions of "law enforcement officer" and "firefighter" under FERS. Previously, one of the conditions under the definition was that the duties of the position are "sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals." This condition was changed by replacing the words "are required to be" with the words "should be." The legislative history of Public Law 100–238 provides no explanation for this change (see House Report 100–374, October 15, 1987, page 21). However, during the months prior to the law's passage, OPM had received comments from some agencies who expressed concern about the validity of their employees' coverage under 5 U.S.C. 8412(d) given the fact that they had not yet had time to establish maximum entry age limits or physical qualifications for their positions. Some agencies also expressed doubts about their authority to establish maximum entry age limits for FERS law enforcement officers and firefighters.

Section 103(a)(1) of Public Law 101–238 provided agency heads with express authority to establish maximum entry ages and the above-described change in section 103(a)(2) was labeled a "clarifying amendment." Since the law states that rigorous law enforcement officer and firefighter positions "should be" limited to young employees and since agencies have the power to ensure that this limiting occurs by establishing maximum entry ages, we conclude that agencies are obligated to establish maximum entry ages for rigorous positions as soon as reasonably possible. Given this, as well as the historical context of the law change, we are giving effect to the "should be" language by amending the interim regulations to allow a position to be considered a rigorous law enforcement officer or firefighter position during any temporary lag that is necessary in establishing a maximum entry age or physical qualifications for a position. The definition of "rigorous position" in section 842.802 of the interim regulations and § 842.804(a) (regarding position documentation requirements) are revised accordingly.

This regulatory change will have particular effect on FERS law enforcement officers and firefighters serving in rigorous positions when the FERS Act took effect or who were hired shortly afterward—before agencies were able to establish maximum entry ages or physical qualifications. It is anticipated that, in the future, agencies generally will be able to establish maximum entry age limits and physical qualifications at the time new rigorous positions are approved.

Section 103(c) of Public Law 100–238 also amended the definition of "law enforcement officer" by adding a new category of qualifying employees who are not subject to the normal definitional requirements. (See 5 U.S.C. 8401(17)(B).) This category consists of employees of the Department of Interior or the Department of Treasury (specifically, officers in the U.S. Park Police and the Uniformed Division of the Secret Service) who, but for enactment of the FERS Act, would be subject to the District of Columbia Police and Firefighters' Retirement System. This

provision was meant to ensure that a group of employees who had historically had eligibility for an early retirement benefit would continue such eligibility. We are therefore revising the regulatory definition of "law enforcement officer" in § 842.802 to include this category. A corresponding change is also made in the definition of "rigorous position" so that positions held by employees under 5 U.S.C. 8401(17)(B) are considered rigorous positions for the purpose of these regulations. In addition, § 842.808(a) is revised to note that determinations under 5 U.S.C. 8401(17)(B) are not subject to OPM review.

Public Law 100–92, which was enacted on August 18, 1987, provided that the definition of "air traffic controller" in 5 U.S.C. 2109 that took effect on January 1, 1987, was applicable to service performed before 1987, as long as the employee's annuity was based on a separation from service occurring on or after January 1, 1987. This allowed flight service station specialist service to be counted as air traffic controller service for employees separating for retirement on or after January 1, 1987, even though it did not qualify as air traffic controller service under the definition in effect at the time the service was performed. We are revising § 842.809(a) of the interim regulations accordingly.

Public Law 100–92 also provided that the Office of Personnel Management shall accept the certification of the "designee" of the Secretary of Transportation or the Secretary of Defense, as applicable, in determining the amount of service performed by any air traffic controller. Accordingly, we are revising the definition of "agency head" in § 842.802 to include such designees.

3. Revisions to Correct and Clarify

In § 842.802 of the interim regulations, we are removing an erroneous reference to 5 U.S.C. 8414(c), which deals with certain military reserve technicians who are eligible for early retirement. The regulations in subpart H do not address these military reserve technicians.

The definition of "air traffic controller" is revised to clarify that it includes only first-level supervisors of employees actively engaged in actual air traffic control duties. This is required by the law, which includes only "immediate supervisors in the definition of "air traffic controller" (see 5 U.S.C. 2109).

A grammatical error in § 842.802 is corrected by inserting a paragraph break after the first sentence in the definition of "primary duties." (This same correction was made in the parallel CSRS definition in a final rule published on December 5, 1990, at 55 FR 50153.)

The definition of "secondary position" is revised to be consistent with the parallel CSRS definition. As explained in the supplementary information accompanying the final CSRS regulation issued on December 17, 1987 (see 52 FR 47893), the revised language makes clear that a secondary position must be a position that is in the career track for a law enforcement officer or firefighter—that is, a position which requires actual experience in a rigorous position, or an equivalent position outside the Federal Government.

Section 842.803(b)(ii) is revised to clarify that the 3-year rigorous service requirement can be met using service not covered by FERS deductions, if otherwise qualifying. Thus, nondeduction service—for example, service under a temporary or intermittent appointment—can count toward the 3-year requirement. This rule is based on 5 U.S.C. 8401 (14)(B) and (17(C), which state that the 3-year requirement is met by an employee who transfers to a supervisory or administrative position "after performing duties" that met the conditions that would qualify a position as a rigorous position. Since an employee can perform the duties applicable to a rigorous position while not covered by FERS retirement deductions, nondeduction service in a qualifying Federal Government position can be counted toward the 3-year requirement.

For purposes of the 3-year requirement, it does not matter whether the service is actually made creditable by payment of a deposit or whether the service cannot be made creditable. Thus, even post-1988 nondeduction service (which can never be made creditable under FERS for annuity entitlement or computation purposes) can be used to meet the 3-year requirement. However, in all cases, to have the special benefit coverage while in a secondary position, the employee is still required to be serving in a rigorous position actually subject to FERS deductions at the time of transfer to a secondary position. (See § 842.803(b)(1).)

Several other revisions are made in § 842.803(b). Some of these are just a matter of reformatting the material. For example, the parenthetical phrase in § 842.803(b)(ii) dealing with first-level supervisors is removed and a new paragraph (a)(3) is added; this reformatting has no substantive effect. In addition, the language in paragraphs (a) and (b) dealing with details is broadened to expressly include temporary promotions.

A new § 842.805(g) is added to make clear that an employee occupying a law enforcement officer, firefighter, or air traffic controller position who is detailed or temporarily promoted to a position not conveying special retirement coverage continues to be covered under 5 U.S.C. 8412 (d) or (e).

Section 842.809 of the interim regulations provides transitional rules for employees with Federal service as law enforcement officers, firefighters, or air traffic controllers before becoming covered by FERS. We are making several revisions in the section to clarify when CSRS definitions and procedures apply in determining whether service qualifies as law enforcement officer or firefighter service. Generally, the FERS definitions of law enforcement and firefighter are more restrictive than those under CSRS. (See House Report 99–606, May 16, 1986, page 132.)

Section 842.809(b) provides that CSRS-covered service performed before an employee becomes covered under FERS (through automatic coverage or voluntary transfer) is not subject to the FERS definitions of law enforcement officer and firefighter. As stated in the supplementary information that accompanied the FERS interim regulations dated January 16, 1987 (52 FR 2068), the FERS definitions take effect on January 1, 1987, and "for employees under the current system [CSRS], the current definitions remain applicable until such time as he or she becomes subject to FERS, either automatically (for short-service employees) or by election * * *" Section 842.809(e) of the interim regulations states that determinations based on the CSRS definitions of law enforcement officer of firefighter must be made in accordance with the CSRS regulations, which require OPM approval. However, § 842.809(d) of the interim regulations appears to allow agency heads to make determinations regarding past CSRS-covered service that is now creditable under FERS (for annuity entitlement and computation purposes), even though the CSRS definitions apply. To eliminate any confusion, we are revising and consolidating § 842.809 (d) and (e) into a new paragraph (d).

The interim regulations in § 842.809 did not take into account the possibility of nondeduction service being performed before becoming covered under FERS. We are, therefore, revising the section to address when CSRS or FERS definitions apply to nondeduction service performed before an employee becomes covered by FERS. These

revisions are made in § 842.809(b) and (d).

These changes will make clear that the CSRS definitions of law enforcement officer and firefighter, as well as CSRS regulatory procedures, apply to all service before January 1, 1987 (when the FERS definition came into effect), and to post-1986 service that was subject to CSRS deductions at the time it was performed or that is creditable toward a CSRS component of a FERS annuity; conversely, FERS definitions and procedures apply to FERS-covered service and all other post-1986 service. (We note that even though post-1988 nondeduction service is not creditable under FERS rules, such service counts toward the 3-year requirement in § 842.803(b).)

4. Other Changes

Invoking its authority under 5 U.S.C. 1104, OPM delegated authority to employing agencies to approve positions as law enforcement officer or firefighter positions under FERS in the interim regulations. Because of the potentially significant impact of the coverage decisions on the Federal budget, coverage determination authority was delegated specifically to the head of the Executive agency—that is, a Cabinet-level Executive department, an independent establishment, or a Government corporation (see 5 U.S.C. 101–105)—with redelegation to lower levels expressly prohibited. (See § 842.803(d) of the interim regulations and supplementary information at 52 FR 2068.)

Upon further consideration, we believe that a very limited redelegation should be permitted. These final regulations would, by revising the definition of "agency head" in § 842.802 allow the head of an Executive department (as defined in 5 U.S.C. 101 to mean one of the 14 Cabinet-level departments in the Government) to delegate this coverage determination authority to a single headquarters-level official who reports directly to the department head. This change would allow Executive department heads to be relieved of this particular decision-making burden. At the same time, the deciding official would be at a level where he or she is sensitive to the long-term budget and personnel implications of these coverage determinations, and in a position to ensure department-wide consistency.

These regulations do not permit redelegation to any official below the head of a Federal agency except as explained above in the case of Executive departments. The head of a component of an Executive department—such as one of the military departments or a component agency such as the Internal Revenue Service (Treasury Department)—is not permitted to make these determinations.

Section 842.804(c) allows an individual to request a determination as to whether his or her position qualifies as a law enforcement officer, firefighter, or air traffic controller position. Of course, any affirmative determination must be made by the agency head in accordance with § 842.803. However, a denial of an individual request for position approval may be made by the agency head's designated representative, in accordance with agency delegations of authority. Any final agency decision denying an individual's request for position approval may be appealed to the Merit Systems Protection Board.

We are amending § 842.807 to clarify that (1) only agency denial decisions made in response to individual requests under § 842.804(c) are subject to appeal and (2) agency denial decisions may be made by officials below the level of agency head. We are also adding a new paragraph in § 842.807 to expressly address individual appeal rights in cases where an agency denies secondary coverage to an employee serving in an approved secondary position because the employee was found not to meet all the requirements for continuation of coverage.

Finally, we are revising the interim regulations at § 842.808(a) to require agencies to provide additional information when they approve a position as a law enforcement officer or firefighter position. In addition to providing the position title and number of incumbents, agencies are required to identify whether the position was rigorous or secondary and, if rigorous, provide the established maximum entry age or the date by which the maximum entry age will be established.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 842

Air Traffic Controllers, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is adopting its interim regulations under 5 CFR part 842 published at 52 FR 2068 on January 16, 1987, as final with the following changes:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

1. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

§ 842.801 [Amended]

2. In § 842.801, paragraph (a)(1) is amended by deleting the word "and 8414(c)".

§ 842.802 [Amended]

3. In § 842.802, the definition of *agency head* is amended by adding the following sentence at the end of the definition:

§ 842.802 Definitions.

* * * * *

Agency Head * * * For purposes of this subpart, "agency head" is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head and who is the sole such representative for the entire department.

* * * * *

4. In § 842.802, the last sentence in the definition of "air traffic controller" is revised to read as follows:

§ 842.802 [Amended]

* * * * *

Air traffic controller * * * Also included in this definition is an employee who is the first-level supervisor of any air traffic controller as described above.

* * * * *

5. In § 842.802, the second sentence of the definition of *firefighter* is amended by removing the word "in" the second time it appears and adding in its place the word "is".

6. In § 842.802, the definition of "law enforcement officer" is amended by adding after the second sentence the following sentence:

§ 842.802 [Amended]

* * * * *

Law enforcement officer * * * *Law enforcement officer* also includes, as required by 5 U.S.C. 8401(17)(B), an employee of the Department of the Interior or the Department of the Treasury who occupies a position that, but for enactment of chapter 84 of title 5, United States Code, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate. * * *

* * * * *

§ 842.802 [Amended]

7. In § 842.802, the definition of "primary duties" is amended by adding a paragraph break after the first sentence (ending with "basis") and redesignating the last two sentences as separate concluding text.

8. In § 842.802, the definition of "rigorous position" is amended by removing the words "are required to be limited" in the introductory text and adding in their place the words "should, as soon as reasonably possible, be limited (through establishment of a maximum entry age and physical qualifications)" and by adding the following sentence at the end of the definition:

§ 842.802 [Amended]

* * * * *

"Rigorous position" * * * "Rigorous position" is also deemed to include a position held by a law enforcement officer as identified in 5 U.S.C. 8401(17)(B) (related to certain employees in the Departments of the Interior and the Treasury).

* * * * *

9. In § 842.802, the definition of "secondary position" is revised to read as follows:

§ 842.802 [Amended]

* * * * *

Secondary position means a position that—

(a) Is clearly in the law enforcement or firefighting field;

(b) Is in an organization having a law enforcement or firefighting mission; and

(c) Is either—

(1) Supervisory; that is, a position whose primary duties are as a first-level supervisor or law enforcement officers or firefighters in rigorous positions; or

(2) Administrative; that is, an executive, managerial, technical, semiprofessional, or professional position for which experience in a rigorous law enforcement or firefighting position, or equivalent experience outside the Federal Government, is a mandatory prerequisite.

10. In § 842.803, paragraph (a), paragraph (b), and paragraph (d) are revised to read as follows:

§ 842.803 Conditions for coverage.

(a) *Rigorous positions.* (1) An employee's service in a position that has been determined by the employing agency head to be a rigorous law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8412(d).

(2) An employee who is not in a rigorous position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a rigorous position is not covered under the provisions of 5 U.S.C 8412(d).

(3) A first-level supervisor position may be determined to be a rigorous position if it satisfies the conditions set forth in § 842.802.

(b) *Secondary positions.* (1) An employee's service in a position that has been determined by the employing agency head to be a secondary law enforcement officer or firefighter position is covered under the provisions of 5 U.S.C. 8412(d), if all of the following criteria are met:

(i) The employee, while covered under the provisions of 5 U.S.C 8412(d), moves directly (that is, without a break in service exceeding 3 days) from a rigorous position to a secondary position;

(ii) The employee has completed 3 years of service in a rigorous position, including any such service during which no FERS deductions were withheld; and

(iii) The employee has been continuously employed in a secondary position or positions since moving from a rigorous position without a break in service exceeding 3 days, except that a break in employment in secondary positions that begins with an involuntary separation (not for cause), within the meaning of 5 U.S.C. 8414(b)(1)(A), is not considered in determining whether the service in secondary positions is continuous for this purpose.

(2) An employee who is not a rigorous position, nor covered while in a secondary position, and who is detailed or temporarily promoted to a secondary position is not covered under the provisions of 5 U.S.C. 8412(d).

* * * * *

(d) Except as specifically provided in this subpart, an agency head's authority under this section cannot be delegated.

11. In § 842.804, the second sentence of paragraph (a) is revised to read as follows:

§ 842.804 Evidence.

(a) * * * The official documentation for the position should, as soon as is reasonably possible, establish that the primary duties of the position are so rigorous that the agency does not allow individuals to enter the position if they are over a certain age or if they fail to meet certain physical qualifications (that is, physical requirements and/or medical standards), as determined by the employing agency head based on the personnel management needs of the agency for the positions in question.* * *

* * * * *

12. In § 842.805, paragraph (f) is amended by removing the word "detained" and adding in its place the words "detailed or temporarily promoted"; and paragraph (g) is added to read as follows:

§ 842.805 Withholding and contributions.

* * * * *

(g) While an employee who holds a rigorous, secondary, or air traffic controller position is detailed or temporarily promoted to a position that is not a rigorous, secondary, or air traffic controller position, the additional withholdings and agency contributions will continue to be made.

13. § 842.807 is revised to read as follows:

§ 842.807 Review of decisions.

(a) The final decision of an agency denying an individual's request for approval of a position as a rigorous, secondary, or air traffic controller position made under § 842.804(c) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency denying an individual coverage while serving in an approved secondary position because of failure to meet the conditions in § 842.803(b) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

14. In § 842.808, paragraph (a) is revised to read as follows:

§ 842.808 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, whether the position is rigorous or secondary, and, if the position is rigorous, the established maximum entry age (or if no maximum entry age has yet been established, the date by which it will be established). The Director of OPM retains the authority to overrule an agency head's determination that a position is a rigorous or secondary position, except such a determination under 5 U.S.C. 8401(17)(B) (concerning certain employees in the Departments of the Interior and the Treasury) or under 5 U.S.C. 8401(17)(D) (concerning certain positions primarily involved in detention activities).

* * * * *

15. In § 842.809, paragraph (e) is removed; paragraph (a), the last sentence of paragraph (b) introductory text, and paragraph (d) are revised; and paragraphs (b)(1) and (2) are added to read as follows:

§ 842.809 Transitional provisions.

(a) Any service as an air traffic controller, within the meaning of this term under 5 U.S.C. 2109 as in effect on or after January 1, 1987—even if performed before that date—is included in determining an employee's length of air traffic controller service under 5 U.S.C. 8412(e) for the purposes of retirement eligibility and for mandatory separation under 5 U.S.C. 8425(a) as long as the annuity is based on a separation from service occurring after 1986.

(b) * * * The FERS definitions of firefighter under 5 U.S.C. 8401(14) and law enforcement officer under 5 U.S.C. 8401(17) are not applicable to service performed—

(1) Before 1987; or

(2) After 1986 and before an employee first becomes subject to chapter 84 (that is, subject to FERS deductions), unless that service was neither subject to CSRS deductions nor creditable in a CSRS component as described in § 846.304(b).

* * * * *

(d) (1) The CSRS definitions of law enforcement officer under 5 U.S.C. 8331(20) and firefighter under 5 U.S.C. 8331(21) are applicable to service performed before an employee became subject to chapter 84 if the service was—

(i) Subject to CSRS deductions at the time it was performed (including service that becomes creditable under FERS annuity computation rules);

(ii) Performed before 1987 and not subject to retirement deductions; or

(iii) Performed after 1986 and not subject to retirement deductions but is creditable in a CSRS component as described in § 846.304(b).

(2) The determination of whether any service meets the CSRS definitions of law enforcement officer under 5 U.S.C. 8331 (20) or firefighter under 5 U.S.C. 8331(21) must be made in accordance with the provisions of Subpart I of Part 831 of this chapter.

§ 842.809 [Amended]

16. In § 842.809, the term "10-year" is revised to read "3-year" in paragraphs (b), (c)(1)(ii), and (c)(2)(ii).

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150-AE20

Revision of Fee Schedules; 100% Fee Recovery, FY 1992

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement Public Law 101-508, signed into law on November 5, 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1992 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1992 is approximately $492.5 million.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), signed into law on November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF) for FYs 1991 through 1995 by assessing license, inspection, and annual fees.

On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** which established the part 170 professional hourly rate and the materials licensing and inspection fees as well as the part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. The July 10, 1991, final rule became effective August 9, 1991. In addition to establishing the FY 1991 fees, the August 9, 1991, final rule established the underlying basis and method for determining the part 170 hourly rate and fees and the part 171 annual fees.

This final rule includes the limited changes made to 10 CFR parts 170 and 171 which were issued as a final rule on April 17, 1992 (57 FR 13625), with an effective date of May 18, 1992. The limited change to part 170 allows the NRC to bill quarterly for those license fees that are currently billed every six months. The limited change to part 171 adjusts the maximum annual fee assessed a materials licensee who qualifies as a small entity under the NRC's size standards. The maximum annual fee of $1,800 per licensed category is continued for FY 1992. However, a lower tier small entity fee of $400 per licensed category has been established for small businesses and non-profit organizations with gross receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On April 29, 1992 (57 FR 18095), the NRC published the proposed rule that presented the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its

budget authority for FY 1992 less the appropriation received from the NWF. The basic methodology used in the proposed rule was unchanged from that used to calculate the part 170 professional hourly rate, the specific materials licensing and inspection fees in part 170, and the part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). Because the public was provided an opportunity to comment on the basic approach, policies, and methodology used in the July 10, 1991, final rule and because these comments were fully addressed in that final rule, the NRC requested public comment only on the issue of whether the methodology adopted in FY 1991 was properly applied to the FY 1992 budget authority.

II. Responses to Comments

The NRC received nineteen public comments by the close of the comment period on May 29, 1992, and an additional ten comments by the close of business on June 22, 1992. These comments were evaluated in the development of this final rule.

Of the twenty-nine comments, two were from power reactor licensees or their representatives and twenty-seven were from persons concerned with other types of licenses, including eleven comment letters from the uranium industry or their representatives. Copies of all comment letters received are available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed in the context of the narrow focus of this final rule.

A. Comments Regarding Application of the Methodology.

1. *Comment.* A few commenters indicated that the NRC has not provided sufficient information on which to evaluate the fees to be assessed for FY 1992. These commenters stated that the NRC violated the Administrative Procedure Act (APA) by failing to provide an explanation of how it arrived at its final determination of the annual fees, particularly as they apply to fuel cycle facilities. They also stated that the NRC did not provide sufficient detail concerning the NRC budget to verify the significant changes in the proposed rule. Commenters recommended that the NRC make publicly available its Five Year Plan or other documents with an equivalent level of detail to provide the information necessary to allow an effective evaluation of, and permit affected licensees to provide constructive comments on, the proposed rule.

Response. The NRC believes it has provided sufficient information concerning the FY 1992 budget to allow effective evaluation and constructive comment on the proposed rule. In part III, the Section-by-Section Analysis of the proposed rule published April 29, 1992 (57 FR 18097), the NRC provided a detailed explanation of the FY 1992 budgeted costs for the various classes of licensees being assessed fees. In addition, the NRC workpapers pertinent to the development of the fees to be assessed were placed in the Public Document Room (PDR) on April 29, 1992, for public review. The workpapers provide additional information concerning the development of the fees, including the FY 1992 budgeted resources at the subactivity level for the major programs. The resources shown in the workpapers are the same as those identified in the Five Year Plan for FY 1992 and are displayed at the lowest level, the subactivity level, as in the Five Year Plan.

2. *Comment.* A few commenters indicated that the hourly rate of $123 for FY 1992 (a seven percent increase over FY 1991) is not justified, and that the NRC had not indicated that it is incurring an increase in the area of salaries, benefits, and overhead but rather an increase in total NRC spending. The commenters pointed out that the NRC professional rate has increased by approximately 115 percent over a seven year period while the Consumer Price Index (CPI) has shown an inflation rate of about 22 percent for the same period. The commenters recommended that the NRC bring its FY 1992 hourly rate back in line with the increase in the CPI and the average wage increases in the industry it regulates. This would be three to four percent a year or an hourly rate of $119 for FY 1992. These commenters suggested that it is inappropriate to raise the professional rate and inspection fees by 7 percent. The commenters recommended that the NRC use the CPI or other indices for determining future adjustments to its hourly rates.

Response. The NRC professional hourly rate is established to recover approximately 100 percent of the Congressionally approved budget, less the appropriation from the NWF, as required by OBRA–90. Both the method and budgeted costs used by the NRC in the development of the hourly rate of $123 for FY 1992 are discussed in detail in the part III, Section-by-Section Analysis, for § 170.20 of the proposed rule (57 FR 18097). For example, Table II shows the direct FTEs (full time equivalents) by major program for FY 1992 and Table III shows the budgeted costs (salaries and benefits, administrative support, travel and other G&A contractual support) which must be recovered through fees assessed for the hours expended by the direct FTEs. The budgeted costs have increased $38.6 million as compared to FY 1991 levels. This increase reflects the amount required by the NRC to effectively accomplish the mission of the agency. The specific details regarding the budget for FY 1992 are documented in the NRC's publication "Budget Estimates, Fiscal Years 1992–1993" (NUREG–1100, Volume 7), which is available to the public. Given the increase in the budget it is necessary to increase the 1992 hourly rate to recover 100 percent of the budget as required by OBRA–90. The NRC is unable to use the CPI or other indices in the development of the NRC hourly rate or the fees to be assessed under 10 CFR parts 170 and 171 because if the hourly rate were increased by only three to four percent over the FY 1991 levels, the NRC could not meet the statutory mandate requirement of OBRA–90 to recover approximately 100 percent of the NRC budget authority through fees.

3. *Comment.* Several commenters indicated that the imposition of the annual fees in certain instances bears no "reasonable relationship to the cost of providing regulatory services" and therefore the fees violate OBRA–90 in that they have not been "fairly and equitably" allocated among licensees. Commenters argued, for example, that the NRC should not charge two fees for one process covered by two licenses or that a higher amount of generic safety costs should not have been allocated to high enriched uranium facilities as compared to low enriched uranium facilities. Another commenter stated that it is not fair and equitable to assess a higher fee for a UF_6 converter than for a mill license. One commenter suggested that it is not considered "practicable" to assess all licensees of a class to compensate for revenue lost from other classes of licensees because of license terminations and that he should be provided an accounting of the component costs for NRC generic activities, e.g., rulemaking, upgrading safeguards requirements, modifying standard review plans, overseeing regional programs and developing inspection programs.

Response. In the final rule published July 10, 1991 (56 FR 31480), the NRC indicated that it is not practical to allocate costs on the basis of such

factors as difference in processes and whether or not the facility has more safety problems than another facility at a specific point in time. It must be recognized that NRC generic safety and safeguards costs included in the annual fee are not related to a specific individual licensee. Costs related to a specific application, license or approval that provide an identifiable service are recovered under the fee regulations of 10 CFR part 170. For the generic and other regulatory costs not recovered under 10 CFR part 170, the NRC, in compliance with the requirements of OBRA–90, has allocated these costs to major classes of licensees. The law permits, and the NRC has established, a schedule of annual charges that assesses different annual charges for different licensees or classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was divided into subclasses. Within a class or subclass of licensees, the costs were uniformly allocated to each licensee in the class or subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each licensee within a class or subclass. This approach and principle were used for all classes of licensees. Therefore, the NRC cannot provide each licensee an accounting of the component costs for NRC generic and other regulatory activities. However, the activities associated with a specific class of licensees are summarized in this rule and detailed in publicly available fee workpapers. With respect to license terminations that occurred during FY 1991, it must be recognized that for FY 1992 the base or total number of licensees has decreased for some classes of licensees, and therefore the fees must be increased in FY 1992 in order for the NRC to recover approximately 100 percent of its budget. Because the costs are allocated to a class of licensees, any terminations that occur within the class will raise the fees for the remainder of the licensees within that class.

4. *Comment.* A few commenters indicated that the NRC may have inappropriately included certain budgeted costs in the fee base. One commenter indicated that the proposed rule did not show any offsets to FY 1992 salaries and expenses from revenues received from cooperative nuclear safety research programs, services rendered to foreign governments and international organizations, and the material and information access authorization program. This commenter noted that the FY 1992 authorization language indicates that money from these programs may be retained and used for salaries and expenses associated with those activities. One commenter recommended that NRC review its FY 1992 allocation of funds and confirm that the Nuclear Waste Fund (NWF) appropriation of about $20 million includes $1.7 million in administrative costs for high level waste activities in order to avoid double payment by utilities, once through their mill/kwhr payment to the NWF and again through the annual charge that recoups total NRC administrative costs.

Response. The NRC provides some technical assistance to foreign governments and international organizations on a reimbursable basis and participates in cooperative research programs. For example, the Omnibus Budget Reconciliation Act, FY 1987, requires that the NRC certify containers that will be used to transport plutonium through United States air space and that all costs incurred for this certification be reimbursed by the foreign country involved. Examples of international cooperative research include the participation of Finland and Spain in severe accident research, Austria on source term research, and Korea on piping integrity research. These costs are not included in NRC's budget request but are paid for by the foreign government or international organization for which the work is being performed. These activities are therefore not included in the computation of 100 percent fee recovery for the funds appropriated to the NRC and are therefore not charged to licensees through the assessment of user fees. These monies are separately identified in the agency's financial systems, and are deposited and disbursed for the performance of the functions for which they are collected.

With respect to the NWF appropriation for the FY 1992 budget, $1.7 million of the NRC's total administrative support funds was allocated to the High-Level Waste Regulation program based upon the full-time equivalent staffing budgeted for that program. Funds for the NRC High-Level Nuclear Waste Regulation program are appropriated from the Nuclear Waste Fund. Licensees are not charged fees for the administrative support costs which are allocated to the Nuclear Waste Fund.

5. *Comment.* One commenter indicated that to assess fee Category 2.A.(2), Class I, fees for sites undergoing reclamation amounts to double charging because these types of facilities are already charged fees under part 170 for the full cost of regulatory services associated with the reclamation process.

Response: To recover 100 percent of the budget, the NRC assesses two types of fees. First, license and inspection fees are assessed under 10 CFR part 170 to recover the costs to the NRC of providing individual services to specific applicants for, and holders of, NRC licenses and approvals. The part 170 fees are billed for specific services rendered in response to an application filed with the NRC for review or an inspection conducted by the NRC. Second, annual fees are assessed under 10 CFR part 171 to recover NRC generic and other regulatory costs not recovered under 10 CFR part 170. This is the process used to charge uranium recovery licensees. Thus, there is no double charging of fees to uranium recovery licensees because the annual fee recovers only those costs not recovered under 10 CFR part 170.

6. *Comment.* A few commenters submitted comments on the methodology used by the NRC to develop the lower tier small entity fee of $400 established by the NRC effective May 18, 1992. While applauding the NRC for developing a lower tier small entity fee, commenters recommended that the NRC —

(1) Expand the criteria as to what constitutes a "small entity" and that a sliding scale fee should be considered based on ability to pay;

(2) Reexamine the method of allocation of costs, particularly the lower tier small entity fee of $400 because these commenters believe that it is inherently unfair to enable "mom and pop" operations to remain in business yet force modest companies, with comparably small radiographic testing departments, to subsidize them;

(3) Clarify whether the gross annual receipts are considered income generated only from the activities pertaining to the license or income generated from the entire entity composed of various departments; and

(4) Allow small county governmental jurisdictions to deduct the population of incorporated cities and villages not within the jurisdictional powers of the county.

Response. These types of comments were addressed by the NRC in section II, Responses to comments, item B., of the final limited rule published by the NRC on April 17, 1992 (56 FR 13626–13627). Briefly, the NRC indicated that any reduction in fees for small entities must be paid by other NRC licensees and that while the lower tier small entity fee of $400 does not eliminate the impact of the fees on small entities, it

substantially reduces the impact for those licensees with relatively low gross annual receipts of less than $250,000 and for small governmental jurisdictions with a relatively low population of less than 20,000. With respect to the question of what constitutes gross annual receipts, the NRC stated clearly in establishing the size standards and in the promulgation of the final rule establishing the lower tier small entity fee that the term "annual receipts" is used in the same manner as used by the Small Business Administration (SBA). In 13 CFR 121.402(b)(2), annual receipts are defined "* * * to include all revenue in whatever form received or assessed from whatever sources * * *" (54 FR 52647; December 21, 1989) (57 FR 13625; April 17, 1992). Therefore, the term "annual gross receipts" refers to the licensee's entire business, not solely receipts from licensed activities. For purposes of qualifying as a small governmental jurisdiction under the NRC fee regulations, the population of a county includes the population of all cities, towns, and villages within the county. The NRC finds no basis to modify our approach in this area.

7. *Comment.* One commenter indicated that he had submitted a petition for rulemaking to the NRC to review the FY 1991 methodology so that medical licensees could be treated like similar licensees. The commenter believes the NRC is obligated to address the concerns raised in the petition in terms of whether the proposed fee schedule for FY 1992 is consistent with the methodology adopted in FY 1991. The commenter suggests that the NRC institute an immediate moratorium freezing fees at FY 1991 levels until the petition is considered in its entirety.

Response. The NRC is not obligated to address the concerns raised in the petition of rulemaking filed with the NRC before adopting the final rule establishing fees for FY 1992. The NRC clearly stated when it published receipt of the petition for rulemaking in the Federal Register that "NRC intends to consider the issues raised by the petitioners after the rulemaking action necessary to establish the license and annual fees for FY 1992 is completed * * *. The petitioners' concerns will be considered within the context of the review and evaluation of the fee program for FY 1993 which will be conducted as part of the NRC's continued implementation of Public Law 101-508" (57 FR 20213; May 12, 1992). The NRC has not yet completed that evaluation. To adopt an immediate moratorium freezing fees at the FY 1991 level until the petition is considered would result in the NRC not meeting the statutory requirements of OBRA-90 that NRC recover approximately 100 percent of its budget authority for FY 1992.

8. *Comment.* One commenter indicated that the NRC did not properly apply the methodology in FY 1991 to one of its licensees who conducts multiple activities under a single license. The commenter noted that one UF_6 converter operates multiple activities under a single license and therefore a substantially larger share of NRC budgeted costs allocated to UF_6 converters should be assessed to the one licensee that is conducting multiple activities. For the same reason, the commenter indicated that this licensee should be assessed a substantially larger portion of the low level waste (LLW) surcharge.

Response. The NRC has reexamined the allocation of costs to the UF_6 conversion licenses. This reexamination has been accomplished within the framework of the OBRA-90, accompanying Conference Report, and the fundamental principles used by the Commission in establishing annual fees for all classes of licensees.

OBRA-90 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the fuel facilities class of licensees were allocated further to UF_6 conversion, HEU fuel fabrication, LEU fuel fabrication and other licenses. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the UF_6 subclass are for the safety generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. These costs were allocated uniformly to each of the two licenses within the UF_6 subclass, based on the premise that there is not a significant difference in the generic and other regulatory services provided to each of the licenses.

The same NRC regulations (e.g., 10 CFR part 40), guidance (e.g., Regulatory Guides) and policies are applicable to both the license which authorizes deconversion activities (UF_6 to UF_4) and 1 UF_6 conversion and the license that only authorizes UF_6 conversion. The 10 CFR part 40 generic safety regulations are applied in the same manner to each of the two licenses in the subclass independent of the source material activities authorized by the two licenses.

The NRC costs attributable to the UF_6 subclass are more related to the fact that a license exists, not to the UF_6 manufacturing process. Thus a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

The surcharge portion of the annual fee includes NRC budgeted costs that are not attributable to the UF_6 subclass. However, it is assessed to the licensees in the subclass for policy reasons. For the UF_6 subclass of licensees, the surcharge includes a portion of low-level waste costs and costs not recovered from small entities. In the Conference Report, Congress indicated that these types of costs "may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment." Following this guidance, the NRC decided to uniformly allocate these costs to each fuel facility resulting in the same surcharge for each license.

9. *Comment.* Several commenters indicated that it appeared as if uranium licensees are being billed for agency overhead that is not attributable to the regulation of the uranium mining industry. These commenters noted that a considerable amount of the agency resources are likely dedicated to interagency work for the Department of Energy (DOE), such as NRC review of DOE's reclamation plans for title 5 uranium mill tailings sites, and interaction with the Environmental Protection Agency (EPA) on the promulgation of regulations. The commenters noted that these agencies are not billed for these NRC activities which are associated with uranium recovery. The commenters disagreed with the NRC's position that all substantive review at DOE sites is essentially completed prior to the application for a general license for that site. The commenters also disagreed with NRC's interpretation of OBRA-90 that in order to be billed for annual fees one must be a licensee of the NRC. The

commenters argued that the test is whether "any person" receives a service or thing of value from the Commission because OBRA–90 allows the "collection of fees from any person" and "all licensees". That person, whether a licensee or not, commenters argued, is required to pay fees to cover the NRC's cost of providing the services or thing of value.

Response. With respect to the 10 CFR part 170 fees assessed pursuant to the Independent Offices Appropriation Act (IOAA) of 1952, the NRC is precluded, under the IOAA, from assessing fees to Federal agencies for specific services rendered. The OBRA–90 limits annual fee assessments to licensees of the NRC. Thus, the NRC does assess annual fees under 10 CFR part 171 to Federal agencies to the extent that those Federal agencies have a license or approval/certificate from the NRC. As indicated in the Conference Report accompanying OBRA–90, the Commission must collect approximately 100 percent of its budget through fees, even though in some instances certain activities are not attributable to an existing NRC licensee or class of licensees. With regard to NRC activities for DOE under the Uranium Mill Tailings Radiation Control Act (UMTRCA), the NRC is prohibited under the IOAA from assessing such part 170 fees to Federal agencies. The fees cannot be assessed to DOE under OBRA–90 and 10 CFR part 171 because DOE does not possess a license or approval. Thus, the NRC has assessed the costs for review of DOE's UMTRCA actions based on the Conference Report guidance that the costs be "recovered from such licensees as the Commission in its discretion determines can fairly, equitably and practicably contribute to their payment." These costs are being recovered from power reactor licensees, not from uranium recovery licensees as implied by the commenters. This was noted in the discussion in the final rule of the surcharge for power reactors (56 FR 31486; July 10, 1991). The interaction that NRC has with EPA is necessary for NRC to develop and execute NRC's generic safety regulatory programs, primarily as a result of the Clean Air Act. Thus, some of these costs are for NRC generic regulatory activities for uranium recovery facilities and have been appropriately included in the annual fee.

B. Other Comments

1. *Comment.* A few commenters stated that the short time frame (30 days) allowed by the NRC for comment on the proposed rule did not provide an adequate opportunity to comment on the proposed rule.

Response. The NRC indicated in section I, Background, of the proposed rule published April 29, 1992, that a 30 day public comment period was being provided because OBRA–90 requires that NRC collect the revised FY 1992 fees by September 30, 1992, and that in order to comply with the public law, fees would have to be assessed on an expedited basis to ensure collection of the required fees by the end of the fiscal year (57 FR 18095). Thirty days represents a sufficient time to provide comments particularly because the NRC is not changing the approach or methodology for assessing fees that it adopted in FY 1991.

2. *Comment.* One commenter indicated that sections of the proposed regulation should be included within President Bush's moratorium of new regulations. This commenter argued that the fees for source material licenses, especially fee Category 2.A.(2), Class I, do not meet key aspects of President Bush's regulatory initiative because they are burdensome, impede economic growth, do not incorporate market mechanisms and do not provide a strong, systematic cost benefit realization.

Response. OBRA–90 requires the NRC to promulgate each year a user fee schedule that will result in the collection by the end of the fiscal year of a sum approximating 100 percent of its budget, minus the appropriation received from the Nuclear Waste Fund. Any delay in the publication of this rule would result in the NRC's inability to meet its statutorily imposed deadline for collecting FY 1992 user fees. Therefore, the NRC must publish this rule at this time.

3. *Comment.* Several commenters addressed the proposed change to the § 171.16, Category 2.A.(2) for uranium recovery licensees. The commenters indicated that dividing the current Class I facilities into two classes, which has the effect of increasing the annual fee for a mill by 138 percent over the FY 1991 levels, does not seem justified or reasonable and that the proposed rule does not distinguish between active and inactive facilities. The commenters stated that because inactive mill sites undergoing reclamation do not generate uranium mill tailings but are included in fee Category 2.A.(2) Class I, the NRC has overstated the costs for the entire category and appropriate adjustments must be made. Commenters believe that any licensed facility that is serving solely as a cost center and not generating revenues should be exempt from fees. A few commenters indicated that the assessment of annual fees for part 71 Quality Assurance (QA) Plans that have increased 200 percent over 1991 levels have no reasonable relationship to the cost of providing regulatory services, particularly when the licensee pays separately on an hourly basis for all other services received from the NRC. Commenters pointed out that no other licensees or class of licensees is subject to the same exorbitant level of increase as fee Category 10.B, QA Program Approval Holders.

Response. OBRA–90 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the uranium recovery class of licensees were allocated further to "Class I," "Class II," and "Other" facilities. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the Class I subclass are for the safety generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR part 170 license and inspection fees. These costs were allocated uniformly to each of the eight licenses within the Class I subclass. Uniform allocation is based on the premise that there is no significant difference in the generic and other regulatory services provided to each of the eight licenses. The NRC has reexamined the allocation of costs to the Class I uranium recovery facilities. This reexamination has been accomplished within the framework of the OBRA–90, the accompanying Conference Report, and the fundamental principles used by the NRC in establishing annual fees for all classes of licensees. The NRC generic and other regulatory costs attributable to the Class I facilities subclass are related to the fact that a license authorizing operation exists, not to whether the mill is active or inactive.

Thus, a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

With respect to QA plan approvals, the NRC experienced a significant number of requests from QA approval holders to change their plans during the past year. Many QA approval holders amended their plans, within the window of opportunity provided by the NRC. These QA approval holders downgraded the authorized use of the plan from "fabrication and use" to "use" only. These changes have resulted in a significant decrease in the number of plans authorizing "fabrication and use" and an increase in the number of plans authorizing "use only". Therefore, in order to recover the costs for plans authorizing "fabrication and use" from fewer approval holders, it is necessary to assess a much higher annual fee than was assessed in FY 1991. Similarly, to recover the costs for plans authorizing "use only" from an increased number of plan holders has resulted in a lower annual fee for these approval holders.

4. *Comment.* One commenter objected to the NRC proposal to exempt from the FY 1992 annual fee those licensees who filed for termination or possession only during the period October 1, 1991, through December 31, 1991. This commenter indicated that it appeared arbitrary to establish such a deadline when changes to a license occur throughout the year and that licensees should be permitted to file exemption requests related to the FY 1992 fees after December 31, 1991. Another commenter indicated that in cases where the fees have substantially increased, licensees should now be given the option of canceling the license or approval and thus avoid the annual fee for FY 1992.

Response. In the proposed rule, the Commission indicated that during the one month period from the publication of the FY 1991 final rule on July 10, 1991, to August 9, 1991, the effective date of the rule, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the Commission will exempt from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses prior to January 1, 1992. All other licensees and approval holders who held a license or approval on October 1, 1991, will be subject to the FY 1992 annual fees. This would not, however, preclude a licensee from filing a specific exemption request with respect to the FY 1992 fees after December 31, 1991 and within ninety days of the effective date of this rule as specified in 10 CFR 171.11. An exemption request would be handled on a case-by-case basis. As in FY 1991, the NRC plans to continue a very high threshold of eligibility for exemption requests and reemphasizes its intent to grant exemptions sparingly. With respect to the comment that licensees now be given the option of canceling the license or approval and avoid the FY 1992 fee, the NRC notes that licensees were put on notice in the proposed rule published April 12, 1991, and again in the final rule published July 10, 1991, that the NRC would assess annual fees that would significantly impact a substantial number of its licensees in order to recover 100 percent of its budget authority for FY 1991 through FY 1995. The NRC mailed copies of both the proposed and final notices to each licensee.

5. *Comment.* A few commenters claimed that NRC intends to make the final rule establishing the FY 1992 license and annual fees effective upon publication in violation of section 553(b) of the Administrative Procedure Act.

Response. The NRC clearly stated in Section I, Background, of the proposed rule that, as in FY 1991, the final rule would become effective 30 days after publication in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration or approval holder upon publication of the final rule. Payment is due on the effective date of the rule (57 FR 18095; April 29, 1992). This fully satisfies all legal requirements.

C. Comments Beyond the Scope

There were four groups of comments that were not within the scope of the proposed rule, and therefore were not evaluated for the purposes of issuing this final rule. Briefly, they are—

The legality of the fees to be assessed by the NRC;

The appropriateness of the NRC budget and regulatory program;

The impact of the fees on licensees; and

The annual fee should be based on the amount of material, or the size of the licensee's operation.

1. Legality of Fees

Comment. Commenters indicated that OBRA–90 fails to set forth adequate standards to guide NRC's discretion in setting annual charges under part 171. Therefore, the fees amount to a "tax" rather than a "fee" and NRC lacks legal authority to promulgate and assess the charges.

Response. The legal issues, including the issue of "tax" vs. "fee", involved in the assessment of annual fees were fully addressed in the final rule published on July 10, 1991 (Section III, Responses to Comments, item A., Legal issues (56 FR 31473–31475). The NRC's approach satisfies all legal requirements.

2. Appropriateness of NRC Budget and Regulatory Program

Comment. There were several commenters who questioned the size of the NRC budget and regulatory program. Some commenters indicated that they would expect a decrease in the NRC budget because of the significant reduction in the number of licensees within the past year and the fact that Maine became an Agreement State during FY 1992. Other commenters do not believe the 42 percent increase in the budget for uranium recovery activities over the previous year is justified given the current size of the licensed uranium industry. These commenters noted that there are no active conventional uranium mines and mills in the United States and only three commercially operating in-situ leach facilities. They argued that the fee of $238,700 appears grossly out-of-line with the degree of NRC involvement for uranium recovery sites. Commenters suggested that the NRC—

(1) Freeze fees at FY 1991 levels;

(2) Distribute copies of the NRC budget to licensees for approval or disapproval; and

(3) Appoint an outside reviewer to evaluate the scope and effectiveness of the NRC medical program because the increases are tied to unnecessary and overly expensive medical regulation.

Response. OBRA–90 requires NRC to recover 100 percent of its budget authority through fees. The fees being assessed for FY 1992 fulfill this requirement. The budget is developed by the NRC, submitted by the President to the Congress, and approved by the Congress. The basis for the NRC FY 1992 resources are explained in the NRC's Budget Estimates, Fiscal Years 1992–1993 (NUREG–1100; Volume 7).

The basis for the resources are thoroughly addressed by the Congress through hearings and written questions and answers. The FY 1992 NRC hearings are documented, for example, in the publication Energy and Water Development Appropriations for FY 1992—Hearings Before a Subcommittee on Appropriations, House of Representatives, One Hundred Second Congress, First Session Part 6. The resources resulting from this review and decision process are those necessary for NRC to implement its statutory responsibilities. The fees must be consistent with this approved budget in order to comply with OBRA–90. The agency makes an extraordinary effort to ensure to the maximum extent possible that fees are related to the cost of providing services to the beneficiaries of the NRC activity. Questions relating to the NRC budget approval process were also addressed in the final rule published by the Commission on July 10, 1991, in Section III, Responses to Comments, item *E, Other comments*, (56 FR 31482).

3. Impact of Fees on Licensees

Comment. Several commenters expressed concern about the impact of the fees. Some commenters indicated that an exemption should be offered to nonprofit medical institutions similar to nonprofit educational institutions and that the previous exemption from fees for State and local governments be reestablished.

Response. The impact issues regarding the assessment of the annual fees were fully addressed by the Commission in the final rule published July 10, 1991 (see Section III., Response to comments, item B2. Major Policy Issues—Consideration of nonsafety impacts in assessing fees.) The NRC continues to believe that the previous assessment of impacts and resulting conclusions remain appropriate.

4. Fees Based on Material Possessed and Size of Operation

Comment. Commenters suggested that the NRC assess fees based on the amount of throughput of material, the size of the facility, the amount or type of material possessed, the sales generated by the licensed location, the competitive condition of certain markets including the assessment of fees to Agreement States and the effect of fees on domestic and foreign competition. Another commenter indicated that it is not fair and equitable, and is contrary to the intent of Congress, to assess UF_6 converters a fee that is larger than assessed for a mill. Another commenter stated that the methodology the NRC has applied is unjustified because it results in increased fees of over 2,000 percent over 1990 fee levels to some medical licensees while the risk to the patient remains the same. The commenter suggested that some consideration be given to the commensurate risk to the patient before exercising such exorbitant fees on the industry which has not increased the risk of radiation exposure to the public or to its patients.

Response. The issues of basing fees on the amount of material possessed, the frequency of use of the material, and the size of the facilities, were addressed by the NRC in the Regulatory Flexibility Analysis in appendix A to the final rule published July 10, 1991 (56 FR 31511–31513). The Commission did not adopt that approach, and finds no basis for altering its approach at this time.

III. Final Action—Changes Included in Final Rule

OBRA–90 requires that the NRC recover approximately 100 percent of its FY 1992 budget authority, including the funding of its Office of the Inspector General, less the appropriations received from the NWF, by assessing license and annual fees.

For FY 1992, the NRC's budget authority is $512.5 million, of which approximately $20.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $492.5 million in FY 1992 through part 170 licensing and inspection fees and part 171 annual fees. The NRC estimates that approximately $105 million will be recovered in FY 1992 from the fees assessed under part 170. This estimate represents an increase of $15 million over that estimated in the proposed rule because of one additional quarterly billing in FY 1992. This is the result of the rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis (April 17, 1992; 57 FR 13625). The remaining $387.5 million would be recovered through the FY 1992 part 171 annual fees.

The Commission has not changed the basic approach, policies, or methodology for calculating the part 170 professional hourly rate, the specific materials licensing and inspection fees in part 170, and the part 171 annual fees set forth in the final rule published July 10, 1991 (56 FR 31472). The public was provided an opportunity to comment fully on the basic approach, policies, and methodology used in the July 10, 1991, final rule.Those comments were fully addressed by the Commission in its final rule. That rule has been challenged in Federal court by several parties and those lawsuits are pending. Under this final rule, fees for most licenses will increase because —

(1) NRC's budget has increased. This has resulted in a corresponding increase in the professional hourly rate; and

(2) Approximately 2,000 licensees have requested that their licenses be terminated or combined since the FY 1991 final rule was adopted. This has resulted in fewer licensees to pay for the costs of regulatory activities not recovered under 10 CFR part 170.

A. Amendments to Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Four amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. These revisions also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of all identifiable regulatory services each applicant or licensee receives.

First, the agency-wide professional hourly rate, which is used to determine the part 170 fees, is increased from $115 per hour to $123 per hour ($214,509 per direct FTE). The rate is based on the FY 1992 direct FTEs and that portion of the FY 1992 budget that is not recovered through the appropriation from the NWF.

Second, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for all applicants and licensees are increased by seven percent to reflect this increase in the professional hourly rate.

Third, the NRC is amending §§ 170.21, Facility Category K, and 170.31, Category 15, to make further refinements to the existing fee categories for import and export license applications and amendments.

Fourth, the NRC is amending § 170.3 to add a definition for nonprofit educational institutions.

B. Amendments to Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Five amendments have been made to part 171. First, §§ 171.15, and 171.16 are amended to increase the annual fees for

FY 1992 to recover approximately 100 percent of the FY 1992 budget less fees collected under part 170 and funds appropriated from the NWF. It should be noted that the amount of the annual fees for several classes of licensees has decreased from the amount shown in the proposed rule. The reason for the decrease in annual fees is that an additional $15 million is estimated to be collected from part 170 fees in FY 1992 because of the change in the part 170 rule effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

Second, § 171.16, Category 2.A.(2), is amended to divide Class I facilities in the uranium recovery class of licensees into two classes. The additional category (Class II) would recognize those licensees who do not generate uranium mill tailings.

Third, § 171.11 is amended to require that licensees who wish to be considered for an exemption from the annual fees file their respective exemption requests within ninety (90) days from the effective date of the rule establishing the annual fees. As in FY 1991, the NRC plans to continue a very high threshold of eligibility for exemption requests and reemphasizes its intent to grant exemptions sparingly.

The NRC notes that during the one-month period from the publication of the FY 1991 final rule on July 10, 1991, to the effective date of the rule on August 9, 1991, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but was unable to respond and take action on all of the requests prior to the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the Commission, for FY 1992, is exempting from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their license or approval or filed for a possession only/storage only license during the period October 1, 1991, through December 31, 1991. All other licensees and approval holders who held a license or approval on October 1, 1991, are subject to the FY 1992 annual fees.

Fourth, § 171.19 is amended to credit the quarterly partial payments made by certain licensees in FY 1992 toward their FY 1992 annual fees.

Fifth, § 171.5 is amended to add a definition for nonprofit educational institutions.

The NRC notes that the impact of this final rule on small entities has been evaluated in the Regulatory Flexibility Analysis (see appendix A to this final rule). Based on this analysis, the NRC is continuing for FY 1992 a maximum annual fee of $1,800 per licensed category for those licensees who qualify as a small entity under the NRC's size standards. The lower tier small entity annual fee of $400 per licensed category for certain materials licensees, which was adopted by the NRC and became effective on May 18, 1992, will apply for FY 1992 (57 FR 13625; April 17, 1992).

The amounts to be collected through annual fees in the amendments to part 171 are based on the increased professional hourly rate. The part 171 annual fees have been determined using the same method used to determine the FY 1991 annual fees. These amendments to part 171 do not change the underlying basis for part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensee to such class" and the "conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee." 136 Cong. Rec., at H12692–93.

C. FY 1992 Budgeted Costs

The FY 1992 budgeted costs by major activity, relating to the amendments to parts 170 and 171 are shown in Table I.

TABLE I.— RECOVERY OF NRC'S FY 1992 BUDGET AUTHORITY

Recovery method	Estimated amount ($ in millions)
Nuclear Waste Fund	$20.0
Part 170 (license and inspection fees)	105.0
Part 171 (annual fees):	
Power Reactors	309.6
Nonpower Reactors	.6
Fuel Facilities	9.9
Spent Fuel Storage	.2
Uranium Recovery	2.0
Transportation	5.0
Material Users	[1] 31.3
Subtotal	358.6
Costs remaining to be recovered not identified above	28.9
Total	512.5

[1] Includes $6.2 million that will not be recovered from small materials licensees because of the reduced small entity fees.

The $28.9 million identified for those activities which are not identified as either part 170 or part 171 or the NWF in Table I are distributed among the NRC classes of licensees as follows:

$25.1 million to operating power reactors;

$1.9 million to fuel facilities; and

$1.9 million to other materials licensees.

In addition, approximately $6.2 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower tier small entity fee of $400 for certain licensees. In order for the NRC to recover 100 percent of its budget authority in accordance with OBRA–90, the NRC will recover $5.4 million of the $6.2 million from operating power reactors and the remaining $.8 million from large entities that are not reactor licensees.

This distribution results in an additional charge (surcharge) of approximately $272,000 per operating power reactor; $155,100 for each HEU, LEU, and UF_6 fuel facility; $38,800 for each other fuel facility license and waste disposal license in Category 4A; $1,600 for each materials licensee in a category that generates a significant amount of low level waste; and $150 for other materials licenses. When added to the base annual fee of approximately $2.8 million per reactor, this will result in an annual fee of approximately $3.1 million per operating power reactor. The total fuel facility annual fee would be between approximately $0.1 million and $2.3 million. The total annual fee for materials licenses would vary depending on the fee category(ies) assigned to the license.

These additional charges not directly or solely attributable to a specific class of NRC licensees or costs not recovered from all NRC licensees on the basis of previous Commission policy decisions would be recovered from the designated classes of licensees previously identified. A further discussion and breakdown of the specific costs by major classes of licensees are shown in section IV of this final rule.

The NRC notes that in prior litigation over NRC annual fees, the U.S. Court of Appeals for the District of Columbia Circuit concluded that the NRC "did not abuse its discretion by failing to impose the annual fee on all licensees," *Florida Power & Light Co.* v. *NRC*, 846 F.2d 765, 770 (D.C. Cir. 1988), *cert. denied*, 109 S. Ct. 1952 (1989). As noted earlier, the conferees on Public Law 101–508 have acknowledged the D.C. Circuit's holding

that the Commission was within its legal discretion not to impose fees on all licensees.

IV. Section-by-Section Analysis

The following analysis of those sections that are affected under this final rule provides additional explanatory information. All references are to title 10, chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.3 Definitions

The definition of a nonprofit educational institution is added to more specifically identify those applicants and licensees that are exempt from fees under § 170.11(a)(4) of the Commission regulations. Since the FY 1991 final rule was published, many licensees have commented that the NRC has not defined the term and that the criteria used by the NRC to classify licensees as nonprofit educational institutions are not clear. The NRC is defining the term "nonprofit educational institution" as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to reflect an agency-wide professional staff-hour rate based on FY 1992 budgeted costs. Accordingly, the NRC professional staff-hour rate for FY 1992 for all fee categories that are based on full cost is $123 per hour, or $214,509 per direct FTE. The rate is based on the FY 1992 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The rate is calculated using the identical method established for FY 1991. The method is as follows:

1. All direct FTEs are identified in Table II by major program.

TABLE II.—ALLOCATION OF DIRECT FTEs BY MAJOR PROGRAM

Major program	Number of direct FTEs [1]
Reactor Safety & Safeguards Regulation	1070.4
Nuclear Safety Research	154.1
Nuclear Material & Low-Level Waste Safety & Safeguards Regulation	294.5
Special and Independent Reviews, Investigations, and Enforcement	71.0
Nuclear Material Management and Support	23.0
Total direct FTE	[2] 1613.0

[1] FTE (full time equivalent) is one person working for a full year. Regional employees are counted in the office of the program each supports.

[2] In FY 1992, 1,613 FTEs of the total 3,261 FTEs are considered to be in direct support of NRC non-NWF programs. The remaining 1,648 FTEs are considered overhead and general and administrative.

2. NRC FY 1992 budgeted costs are allocated, in Table III, to the following four major categories:

(1) Salaries and benefits.
(2) Administrative support.
(3) Travel.
(4) Program support.

3. Direct program support, the use of contract or other services in support of the line organization's direct program, is excluded because these costs are charged directly through the various categories of fees.

4. All other costs (i.e., Salaries and Benefits, Travel, Administrative Support, and Program Support contracts/services for G&A activities) represent "in-house" costs and are to be collected by allocating them uniformly over the total number of direct FTEs.

Using this method, which was described in the final rule published July 10, 1991 (56 FR 31472), and excluding direct Program Support funds, the remaining $346.0 million allocated uniformly to the direct FTEs (1613) results in a rate of $214,509 per FTE for FY 1992. The Direct FTE Hourly Rate is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing $346.0 million by the number of direct FTEs (1613 FTE) and the number of productive hours in one year (1,744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities."

TABLE III.—FY 1992 BUDGET AUTHORITY BY MAJOR CATEGORY

[Dollars in millions]

Salaries and benefits	$238.4
Administrative support	86.5
Travel	13.4
Total nonprogram support obligations	338.3
Program Support	154.2
Total Budget Authority	492.5
Less Program support (Direct Program)	146.5
Budget Allocated to Direct FTE	346.0
Professional Hourly Rate	$123/hour

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses.

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1992 budgeted costs and to more completely recover costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate as shown in § 170.20 and any direct program support (contractual services) cost expended by the NRC. Any professional hours expended on or after the effective date of this rule would be assessed at the FY 1992 rate shown in § 170.20.

Since July 10, 1991, the NRC has continued to receive comments regarding the fees assessed for import and export licenses in accordance with § 170.21, Facility Category K. Based on experience in implementing these fees for the first time, the Commission is amending the existing fee categories in this section to provide for more equitable flat fees by expanding the number of fee categories.

Footnote 2 of § 170.21 is revised to provide that for those applications currently on file and pending completion, the professional hours expended up to the effective date of this rule will be assessed at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, rules as appropriate. For topical report applications currently on file which are still pending completion of the review, and for which review costs have reached the applicable fee ceiling established by the July 2, 1990, rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses.

The licensing and inspection fees in this section are modified to recover more completely the FY 1992 costs incurred by the Commission in providing licensing and inspection services to identifiable recipients. Those flat fees, which are based on the average time to review an application or conduct an inspection, are increased by seven percent across the board to reflect the increase in the professional hourly rate from $115 per hour in FY 1991 to $123 per hour in FY 1992. After application of the seven percent increase to the flat materials fees, the amounts were rounded, as in FY 1991, by applying standard rules of arithmetic so that the amounts rounded would be deminimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

For example, an industrial radiography licensee (Category 3.0.) will pay revised license and inspection fees as follows:

Type of fees	Current fees	Increase (percent)	FY 1992 fees
Application	$3,000	7	$3,200
Renewal	1,800	7	1,900
Amendment	490	7	520
Routine Inspection	1,200	7	1,300
Nonroutine Inspection	2,500	7	2,700

The increase is applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B and 16. The increased fees are assessed for applications filed or inspections conducted on or after the effective date of this rule. Based on experience in implementing the import and export license fees assessed under fee Category 15, the Commission is amending the existing fee categories to provide for more equitable flat fees by expanding the number of fee categories.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the revised hourly rate of $123, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of this rule.

Part 171

Section 171.5 Definitions

The definition of a nonprofit educational institution is added to provide clarification and to more specifically identify those licensees that are exempt from the annual fees under § 171.11(a). Since the final rule was published, many licensees have commented that NRC has not defined the term and that the criteria used by the NRC to classify licensees as nonprofit educational institutions are not clear. The NRC is defining the term "nonprofit educational institution" as a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Section 171.11 Exemptions

Paragraph (a) of this section is amended to require that requests for exemption from the annual fees be filed by the licensee within ninety (90) days from the effective date of the final rule establishing the annual fees. Based on the NRC's experience with the filing of exemption requests under the FY 1991 final rule, a defined time period must be established for the prompt filing of exemption requests. The NRC is, therefore, limiting the filing of exemption requests to the 90 day period immediately following the effective date of the rule establishing the annual fees. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The NRC, in making this change, is not intending to change its exemption policy. As in FY 1991, the NRC plans to continue a very high eligibility threshold for exemption requests and reemphasizes its intent to grant exemptions sparingly.Therefore, the NRC strongly discourages the filing of exemption requests by licensees who have previously had exemption requests denied unless there are significantly changed circumstances.

Exemption requests, or any requests to clarify the bill, will not, per se, extend the interest-free period for payment of the bill. Bills are due on the effective date of the final rule. Therefore, only payment will ensure avoidance of interest, administrative, and penalty charges.

The NRC notes that during the one month period from the publication of the FY 1991 final rule on July 10, 1991, to August 9, 1991, the effective date of the rule, many licensees filed requests for termination with the NRC and were not subject to the FY 1991 annual fees. Many other licensees have either called or written to the NRC since the final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible but it was unable to respond and take appropriate action on all of the requests before the end of the fiscal year on September 30, 1991. Therefore, based on the number of requests filed, the NRC is exempting from the FY 1992 annual fees those licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses during the period October 1, 1991, through December 31, 1991. All other licensees and approval holders who held a license or approval on October 1, 1991, are subject to the FY 1992 annual fees.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect the FY 1992 budgeted costs. Paragraphs (b)(3), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1992. Table IV shows the budgeted costs that have been allocated to operating power reactors. They have been expressed in terms of the NRC's FY 1992 programs and program elements. The resulting total base annual fee amount for power reactors is also shown. On the average, the power reactor base annual fees for FY 1992 have increased about seven percent above the FY 1991 annual fees. It is noted that the power reactor annual fees have decreased from the amount shown in the proposed rule. The decrease in power reactor annual fees is the result of additional collections which are estimated from part 170 power reactor fees because of the rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

TABLE IV.—ALLOCATION OF NRC FY 1992 BUDGET TO POWER REACTORS BASE FEES [1]

	Program element total		Allocated to power reactors	
	Program support ($, K)	Direct FTE	Program support ($, K)	Direct FTE
Reactor Safety and Safeguards Regulation (RSSR):				
Power Reactor Applications Reviews	$1,100	14.9	1,100	14.9
Standard Reactor Designs Reviews	2,438	56.4	2,438	56.4
Other Reviews	350	8.2		5.9
Reactor License Renewal	1,913	13.7	1,913	13.7
Improvements to Regulations	2,800	14.5	2,800	14.5
Reactor Performance Evaluation	718	33.2	718	33.2
Evaluation of Licensee Performance	600	33.4	600	33.4
Reactor Accident Management	400	10.1	400	10.1
Human Performance Evaluation	600	3.2	600	3.2
Reactor Operator Examinations	6,620	55.9	6,255	53.7
Resident Inspections		203.9		203.9
Region-Based Inspections	5,258	285.7	5,258	280.5
Specialized Inspections	3,197	69.5	3,197	69.5
Project Management		156.6		156.6
Licensing Activities Safety Evaluations	6,816	87.0	6,816	87.0
Regulatory Improvements	335	24.2	335	23.1
RSSR Program Total			32,430	1,059.6
Nuclear Safety Research (NSR):				
Integrity of Reactor Components	27,650	17.5	26,150	17.4
Prevent Damage to Reactor Cores	19,655	26.5	19,455	26.2
Reactor Containment Performance	13,922	10.5	13,922	10.5
Advanced Reactor Research	13,050	22.5	13,050	22.5
Generic Safety Issue Resolution	4,313	24.1	4,313	24.1
Developing and Improving Regulations	6,450	22.0	5,200	13.4
Severe Accident Implementation	2,125	6.0	2,125	6.0
Radiation Protection/Health Effects	6,285	17.5	3,119	8.6
NSR Program Total			87,334	128.7
Nuclear Material and Low Level Waste Safety and Safeguards Regulation:				
Safeguards Licensing and Inspection	465	8.8		.1
Threat and Event Assess./International Safeguards	525	13.2	405	6.8
Decommissioning	1,000	28.1	125	3.7
NMLLWSSR Program Total			530	10.6
Special and Independent Reviews, Investigations, and Enforcement:				
Diagnostic Evaluations	350	7.0	350	7.0
Incident Investigations	50	3.0	50	3.0
NRC Incident Response	1,980	27.0	1,980	27.0
Operational Data Analysis	2,187	25.0	2,087	23.0
Performance Indicators	1,047	4.0	1,047	4.0
Operational Data Collection/Dissemination	2,016	5.0	2,016	5.0
SIRIE Program Total			7,530	69.0
Total			127,824	1,267.9

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

Note: Total Base Fee Amount Allocated to Power Reactors, [2]$399.8 million; less Estimated Part 170 Power Reactor Fees, 90.2 million; part 171 Base Fees for Operating Power Reactors, 309.6 million.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

Based on the information in Table IV, the base annual fees to be assessed for FY 1992 are the amounts shown in Table V below for each nuclear power operating license.

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS

Reactors	Containment type	Annual fee
Westinghouse:		
1. Beaver Valley 1	PWR Large Dry Containment	$2,855,000
2. Beaver Valley 2	do	2,855,000
3. Braidwood 1	do	2,855,000
4. Braidwood 2	do	2,855,000
5. Byron 1	do	2,855,000
6. Bryon 2	do	2,855,000
7. Callaway 1	do	2,855,000
8. Comanche Peak 1	do	2,855,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
9. Diablo Canyon 1	do	2,849,000
10. Diablo Canyon 2	do	2,849,000
11. Farley 1	do	2,855,000
12. Farley 2	do	2,855,000
13. Ginna	do	2,855,000
14. Haddam Neck	do	2,855,000
15. Harris 1	do	2,855,000
16. Indian Point 2	do	2,855,000
17. Indian Point 3	do	2,855,000
18. Kewaunee	do	2,855,000
19. Millstone 3	do	2,855,000
20. North Anna 1	do	2,855,000
21. North Anna 2	do	2,855,000
22. Point Beach 1	do	2,855,000
23. Point Beach 2	do	2,855,000
24. Prairie Island 1	do	2,855,000
25. Prairie Island 2	do	2,855,000
26. Robinson 2	do	2,855,000
27. Salem 1	do	2,855,000
28. Salem 2	do	2,849,000
29. San Onofre 1	do	2,855,000
30. Seabrook 1	do	2,855,000
31. South Texas 1	do	2,855,000
32. South Texas 2	do	2,855,000
33. Summer 1	do	2,855,000
34. Surry 1	do	2,855,000
35. Surry 2	do	2,849,000
36. Trojan	do	2,855,000
37. Turkey Point 3	do	2,855,000
38. Turkey Point 4	do	2,855,000
39. Vogtle 1	do	2,855,000
40. Vogtle 2	do	2,855,000
41. Wolf Creek 1	do	2,855,000
42. Zion 1	do	2,855,000
43. Zion 2	do	2,850,000
44. Catawba 1	PWR—Ice Condenser	2,850,000
45. Catawba 2	do	2,850,000
46. Cook 1	do	2,850,000
47. Cook 2	do	2,850,000
48. McGuire 1	do	2,850,000
49. McGuire 2	do	2,850,000
50. Sequoyah 1	do	2,850,000
51. Sequoyah 2	do	2,850,000
Combustion Engineering:		
1. Arkansas 2	PWR Large Dry Containment	2,850,000
2. Calvert Cliffs 1	do	2,850,000
3. Calvert Cliffs 2	do	2,850,000
4. Ft. Calhoun 1	do	2,850,000
5. Maine Yankee	do	2,850,000
6. Millstone 2	do	2,850,000
7. Palisades	do	2,850,000
8. Palo Verde 1	do	2,844,000
9. Palo Verde 2	do	2,844,000
10. Palo Verde 3	do	2,844,000
11. San Onofre 2	do	2,844,000
12. San Onofre 3	do	2,844,000
13. St. Lucie 1	do	2,850,000
14. St. Lucie 2	do	2,850,000
15. Waterford 3	do	2,850,000
Babcock & Wilcox:		
1. Arkansas 1	PWR Large Dry Containment	2,866,000
2. Crystal River 3	do	2,866,000
3. Davis Besse 1	do	2,866,000
4. Oconee 1	do	2,866,000
5. Oconee 2	do	2,866,000
6. Oconee 3	do	2,866,000
7. Three Mile Island 1	do	2,866,000
General Electric:		
1. Browns Ferry 1	Mark I	2,810,000
2. Browns Ferry 2	do	2,810,000
3. Browns Ferry 3	do	2,810,000
4. Brunswick 1	do	2,810,000
5. Brunswick 2	do	2,810,000
6. Clinton 1	Mark III	2,810,000
7. Cooper	Mark I	2,810,000
8. Dresden 2	do	2,810,000
9. Dresden 3	do	2,810,000
10. Duane Arnold	do	2,810,000
11. Fermi 2	do	2,810,000
12. Fitzpatrick	do	2,810,000

TABLE V.—BASE ANNUAL FEES FOR OPERATING POWER REACTORS—Continued

Reactors	Containment type	Annual fee
13. Grand Gulf 1	Mark III	2,810,000
14. Hatch 1	Mark I	2,810,000
15. Hatch 2	do	2,810,000
16. Hope Creek 1	do	2,810,000
17. LaSalle 1	Mark II	2,821,000
18. LaSalle 2	do	2,821,000
19. Limerick 1	do	2,821,000
20. Limerick 2	do	2,821,000
21. Millstone 1	Mark I	2,810,000
22. Monticello	do	2,810,000
23. Nine Mile Point 1	do	2,810,000
24. Nine Mile Point 2	Mark II	2,821,000
25. Oyster Creek	Mark I	2,810,000
26. Peach Bottom 2	do	2,810,000
27. Peach Bottom 3	do	2,810,000
28. Perry 1	Mark III	2,810,000
29. Pilgrim	Mark I	2,810,000
30. Quad Cities 1	do	2,810,000
31. Quad Cities 2	do	2,810,000
32. River Bend 1	Mark III	2,810,000
33. Susquehanna 1	Mark II	2,821,000
34. Susquehanna 2	do	2,821,000
35. Vermont Yankee	Mark I	2,810,000
36. Washington Nuclear 2	Mark II	2,814,000
Other Reactors:		
1. Big Rock Point	GE Dry Containment	2,810,000
2. Yankee Rowe	Westinghouse PWR Dry Containment	2,855,000
3. Rancho Seco	B&W PWR-Dry Containment	2,860,000
4. Three Mile Island 2	B&W PWR-Dry Containment	2,866,000

The "Other Reactors" listed in Table V have not been included in the fee base because historically they have been granted either full or partial exemptions from the annual fees. With respect to Big Rock Point and Yankee Rowe, the NRC, in this final rule, hereby grants partial exemptions from the FY 1992 annual fees based on requests filed with the NRC in accordance with § 171.11. The total amount of $781,300 to be paid by the two licensees has been subtracted from the total amount to be assessed operating reactors as a surcharge. The NRC, in this final rule, hereby grants full exemptions from the FY 1992 annual fees for Rancho Seco and Three Mile Island 2 based on the fact that these reactors are either permanently or prematurely shut down and do not intend to operate in the future.

Paragraph (b)(3) is revised to change the fiscal year references from FY 1991 to FY 1992. Paragraph (c)(2) is amended to show the amount of the surcharge for FY 1992, which is added to the base annual fee for each operating power reactor shown in Table V. This surcharge recovers those NRC budgeted costs that are not directly or solely attributable to operating power reactors, but nevertheless must be recovered to comply with the requirements of OBRA–90. The NRC has continued its previous policy decision to recover these costs from operating power reactors.

The FY 1992 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1992 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. Reviews for DOE/DOD reactor projects, West Valley Demonstration Project, DOE Uranium Mill Tailing Radiation Control Act (UMTRCA) actions	$4.1
b. International cooperative safety program and international safeguards activities	7.9
c. 60% of low level waste disposal generic activities	5.8
d. Uranium enrichment generic activities	.7
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on Commission policy:	
a. Activities associated with nonprofit educational institutions	6.6
b. Costs not recovered from part 171 for small entities	5.4
Subtotal budgeted costs	30.5
Less amount to be assessed to small older reactors with partial exemption under part 171	.8
Total budgeted costs	29.7

The annual additional charge is determined as follows:

Total budgeted costs ÷ Total number of operating power reactors = $29.7 million ÷ 109 = $272,000 per operating power reactor.

On the basis of this calculation, an operating power reactor, Beaver Valley 1, for example, would pay a base annual fee of $2,855,000 and an additional charge of $272,000 for a total annual fee of $3,127,000 for FY 1992.

Paragraph (d) is revised to show, in summary form, the amount of the total FY 1992 annual fee, including the surcharge, to be assessed for each major type of operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1992 annual fee for non-power (test and research) reactors. In FY 1992, $557,000 in costs are attributable to those commercial and Federal government licensees that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors which are not exempt from fees results in an annual fee of $55,700 per operating license.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The introduction to paragraph (c) is being revised to include educational institutions in the list identifying the types of small entities that may be eligible to pay a reduced annual fee. The

change in this paragraph is necessary because educational institutions were inadvertently omitted from the final rule published on April 17, 1992 (57 FR 13625), relating to reduced annual fees for certain small entities. Paragraph (c)(4) is revised to indicate that the maximum annual fee per licensed category is $1,800 for a small entity in FY 1992.

Paragraph (d) is revised to reflect the FY 1992 budgeted costs for materials licensees, including Government agencies licensed by the NRC. These fees are necessary to recover the FY 1992 generic costs totalling $48.4 million applicable to fuel facilities, uranium recovery facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations. It is noted that the amount of the annual fees for some classes of licensees has decreased from the amount shown in the proposed rule. The decrease is the result of the additional collections which are estimated from part 170 fees because of a rule change effective May 18, 1992, which permits the NRC to bill licensees on a quarterly rather than a semiannual basis.

Tables VI and VII show the NRC program elements and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing and inspection. For the uranium recovery class of licenses, the current Category 2.A.(2) for Class I facilities is further divided into Class I and Class II facilities. Class II facilities are those solution mining licensees, primarily in-situ and heap leach facilities, which do not generate uranium mill tailings. The NRC has reexamined the uniform allocation of costs to Class I facilities in the current rule to determine whether there is a significant difference between the regulatory services provided to operating in-situ facilities that do not generate mill tailings as compared to other licensees in Class I. The NRC is dividing the current Class I facilities into two classes to differentiate between those facilities that generate uranium mill tailings and those facilities that do not generate uranium mill tailings because there are generic regulatory activities (e.g., appendix A to 10 CFR part 40) that are necessary to regulate uranium mill tailings.

For transportation, the costs are those budgeted for transportation research, licensing, and inspection. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage research, licensing, and inspection.

TABLE VI.—ALLOCATION OF NRC FY 1992 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $, K	FTE
Nuclear Safety Research:				
Environmental policy and decommissioning	$2,675	8.5	$180	.6
NSR Program Total			180	.6
Nuclear Material and Low Level Waste Safety and Safeguards Regulation:				
Fuel facilities lic./inspections	$2,460	39.1	$1,260	27.2
Event evaluation		25.0		3.6
Safeguards licensing/inspection	665	21.9	615	16.7
Policy, threat and event assessment	525	13.2	45	.6
Decommissioning	1,000	28.1	54	4.7
NMLLWSSR Program Total			1,974	52.8
Total	2,154	53.4		

Total Base Fee Amount Allocated to Fuel Facilities	[2] $13.6 million
Less Part 170 Fuel Facility Fees	3.7 million
Part 171 Base Fees for Fuel Facilities	$9.9 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1992 BUDGET TO MATERIAL USERS BASE FEES [1]

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Safety Research Mission Area:				
Human factors	$5,750	5.2	$180	.3
Radiation protection/health effects	6,285	17.5	3,677	13.3
Total			3,857	13.6
Nuclear Material and Low Level Waste Safety and Safeguards Regulation:				
Licensing/inspection of materials users	$2,190	110.5	$1,971	99.5
Event evaluation		18.2		13.1
Decommissioning	1,000	28.1	446	15.3
NMLLWSSR program total			2,417	127.9

TABLE VII.—ALLOCATION OF FY 1992 BUDGET TO MATERIAL USERS BASE FEES [1]—Continued

	Total		Allocated to materials users	
	Program support $,K	FTE	Program support $,K	FTE
Special and Independent Reviews, Investigations, and Enforcement:				
Operational data analysis (PE)			100	2.0
Total			6,374	143.5

Base Amount Allocated to Materials Users ($,M)	[2] $37.1 million
Less Part 170 Material Users Fees	$5.8 million
Part 171 Base Fees for Material Users	$31.3 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE and adding the program support funds.

The allocation of the NRC's $9.9 million in budgeted costs to the individual fuel facilities is based, as in FY 1991, primarily on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. Because the two high-enriched fuel manufacturing facilities possess strategic quantities of nuclear materials, more NRC generic safety and safeguards costs (e.g., physical security) are attributable to these facilities.

Using this approach, the base annual fee for each facility is shown below.

	Annual fee ($ in thousands)		
	Safe-guards	Safety	Total
High Enriched Fuel:			
Nuclear Fuel Services	$1,073	$1,097	$2,170
Babcock and Wilcox	1,073	1,097	2,170
Subtotal	2,146	2,194	4,340
Low Enriched Fuel:			
Siemens Nuclear Power	150	533	683
Babcock and Wilcox	150	533	683
General Electric	150	533	683
Westinghouse	150	533	683
Combustion Engineering (Hematite)	150	533	683
Combustion Engineering (Windsor)	150	533	683
Subtotal	900	3,198	4,098
UF_6 Conversion:			
Allied Signal Corp		381	381
Sequoyah Fuels Corp		381	381
Subtotal		762	762
Other fuel facilities (9 facilities at $72,000 each)		648	648
Total	3,046	6,802	9,848

The allocation of the costs attributable to uranium recovery is also based on the conferees' guidance that licensees who require the greatest expenditure of NRC resources should pay the greatest annual fee. It is estimated that approximately 60 percent of the $2.0 million for uranium recovery is attributable to uranium mills (Class I facilities). Approximately 20 percent of the $2.0 million for uranium recovery is attributable to those solution mining licensees who do not generate uranium mill tailings (Class II facilities). The remaining 20 percent is allocated to the other uranium recovery facilities (e.g. extraction of metals and rare earths). The resulting annual fees for each class of licensee are:

Class I facilities—$167,500;
Class II facilities—$73,200;
Other facilities—$58,800.

For spent fuel storage licenses, the generic costs of $172,000 has been spread uniformly to those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $43,000.

To equitably and fairly allocate the $31.3 million attributable to the approximately 7,100 diverse material users and registrants, the NRC has continued to base the annual fee on the Part 170 application and routine inspection fees. Because the application and inspection fees are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency because the inspection frequency is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for each category of license is developed as follows:

Annual Fee = (Application Fee + Inspection Fee/Inspection Priority) × Constant + (Unique Category Costs)

The constant is the multiple necessary to recover $31.3 million and is 2.8 for FY 1992. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1992, unique costs of approximately $2.5 million were identified for the medical improvement program which is attributable to medical licensees: about $200,000 in costs were identified as being attributable to radiography licensees; and about $100,000 was identified as being attributable to irradiator licensees. On the average, the materials annual fees for FY 1992 are increased about 50 percent above the FY 1991 annual fees. The reason for this significant increase is twofold. First, the FY 1992 budgeted amount attributable to materials licensees is about 20 percent higher than the FY 1991 amount. Second, the number of licensees to be assessed annual fees in FY 1992 has decreased about 21 percent below the FY 1991 levels (from about 9,000 to about 7,000). The materials fees must be established at these levels in order to comply with the mandate of OBRA–90 to recover approximately 100 percent of the NRC's FY 1992 budget authority. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity on NRC Form 526.

To recover the $5.0 million attributable to the transportation class of licensees, $1.2 million will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities ($3.8 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $62,800 for users and fabricators and $1,500 for users only.

The amount or range of the FY 1992 base annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES BASE ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$2.2 million.
Part 70—Low enriched fuel.	$683,000.
Part 40—UF_6 conversion	$381,000.
Part 40—Uranium recovery.	$58,800 to $167,500.
Part 30—Byproduct Material.	[1] $430 to $16,400.
Part 71—Transportation of Radioactive Material.	$1,500 to $62,800.
Part 72—Independent Storage of Spent Nuclear Fuel.	$43,000.

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies which is $300,000.

Paragraph (e) is amended to establish the additional charge which is added to the base annual fees shown in paragraph (d) of this final rule. This surcharge continues to be shown, for convenience, with the applicable categories in paragraph (d). The additional charge recovers approximately 40 percent of the NRC budgeted costs of $3.8 million relating to LLW disposal generic activities because 40 percent of the LLW is generated by these licensees. Although these NRC LLW disposal regulatory activities are not directly attributable to materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. The Commission has continued the previous policy decision to recover approximately 40 percent of these LLW costs from materials licensees. The FY 1992 budgeted costs related to the additional charge and the amount of the charge are calculated as follows:

Category of costs	FY 1992 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., 40% of LLW disposal generic activities	$3.8

Of the $3.8 million in budgeted costs shown above for LLW activities, 50 percent of the amount ($1.9 million) are allocated to fuel facilities included in part 171 (19 facilities), as follows: $155,100 per HEU, LEU, and UF_6 facility and $38,800 for each of the other 9 fuel facilities. The remaining 50 percent ($1.9 million) are allocated to the material licensees in categories that generate low level waste (1,090 licensees) as follows: $1,600 per materials licensee except for those in Categories 4A and 17. Those licensees that generate a significant amount of low level waste for purposes of the calculation of the $1,600 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.B, 4.C, 5.B, 6.A, and 7.B. The surcharge for Categories 4A and 17, which also generate and/or dispose of low level waste, is $38,800 for Category 4A and $36,000 for Category 17.

Of the $6.2 million not recovered from small entities, $.8 million is allocated to fuel facilities and other materials licensees. This results in a surcharge of $150 per category for each licensee that is not eligible for the small entity fee.

On the basis of this calculation, a fuel facility, a high enriched fuel fabrication licensee, for example, pays a base annual fee of $2,170,000 and an additional charge of $155,250 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $12,200 and an additional charge of $1,750, for a total annual fee of $13,950 for FY 1992.

Section 171.19 Payment

This section is revised to give credit for those partial payments made by certain licensees in FY 1992 toward their FY 1992 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1992 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, NRC will credit payments received for those three quarters toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee. As in FY 1991, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VII. Regulatory Analysis

With respect to part 170, this final rule was developed pursuant to title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that (1) the NRC had the authority to recover the full cost of providing services to identifiable beneficiaries; (2) the NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations; (3) the NRC could charge for costs incurred in conducting environmental reviews required by NEPA; (4) the NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule; (5) the NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and (6) the NRC's fees were not arbitrary or capricious.

With respect to Part 171, on November 5, 1990, Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90). For FYs 1991 through 1995, OBRA–90 requires that approximately 100 percent of the NRC budget authority be recovered. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1992 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that (1) the annual fees be based on the Commission's FY 1992 budget of $512.5 million less the amounts collected from part 170 fees and the funds directly appropriated from the NWF to cover the Commission's high level waste program; (2) the annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and (3) the annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment. Therefore, when developing the annual fees for operating power reactors the Commission continued to consider the various reactor vendors, the types of containment, and the location of the reactor. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1992. The final rule results in an increase in the fees charged to all licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material, Holders of certificates, registrations, approvals, Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 170.3, the definition *nonprofit educational institution* is added to read as follows:

§ 170.3 Definitions.

* * * * *

Nonprofit educational institution means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate for the NRC based on the FY 1992 budget is $123 per hour.

4. In § 170.21, the introductory paragraph, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[see footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR Part 110.	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b).	
Application—new license	$8,000
Amendment	8,000
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license	$4,900
Amendment	4,900
3. Application for export of components requiring foreign government assurances only.	
Application—new license	$3,100
Amendment	3,100
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review or foreign government assurances.	
Application—new license	$1,200
Amendment	1,200

SCHEDULE OF FACILITY FEES—Continued

[see footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review.	
Amendment	$120

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of such Commission orders. Fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100% of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100% of full rated power, the total costs for the license will be at that decided lower operating power level and not at the 100% capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991 rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1 Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: [4]	
Application—New license	$540
Renewal	540
Amendment	410
Inspections:	
Routine	490
Nonroutine	1,400
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: [4]	
Application—New license	740
Renewal	740
Amendment	250
Inspections:	
Routine	740
Nonroutine	860
E. Licenses for construction and operation of a uranium enrichment facility	
Application	125,000
License, Renewal, Amendment	Full Cost
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
2. Source material:	
A. Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses for possession and use of source material for shielding:	
Application—New license	120
Renewal	120
Amendment	120
Inspections:	
Routine	310
Nonroutine	370
C. All other source material licenses:	
Application—New license	850
Renewal	800
Amendment	480
Inspections:	
Routine	860
Nonroutine	1,600
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	2,500
Renewal	1,500
Amendment	250
Inspections: [5]	
Routine	2,200
Nonroutine	2,200
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	1,400
Renewal	2,500
Amendment	590
Inspections: [5]	
Routine	1,100
Nonroutine	2,100
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	3,600
Renewal	1,500
Amendment	490
Inspections:	
Routine	1,500
Nonroutine	2,000
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	1,200
Renewal	540
Amendment	330
Inspections:	
Routine	860
Nonroutine	1,300
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	540
Renewal	510
Amendment	270
Inspections:	
Routine	490
Nonroutine	740
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	1,300
Renewal	430
Amendment	370
Inspections:	
Routine	620
Nonroutine	1,400
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes:	
Application—New license	4,900
Renewal	2,000
Amendment	490

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
Inspections:	
Routine	1,100
Nonroutine	1,500
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	2,200
Renewal	1,200
Amendment	270
Inspections:	
Routine	740
Nonroutine	740
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	2,800
Renewal	1,300
Amendment	370
Inspections:	
Routine	490
Nonroutine	740
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,700
Renewal	620
Amendment	420
Inspections:	
Routine	740
Nonroutine	740
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	2,000
Renewal	1,000
Amendment	310
Inspections:	
Routine	740
Nonroutine	740
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	2,500
Renewal	2,100
Amendment	540
Inspections:	
Routine	1,000
Nonroutine	1,300
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	1,200
Renewal	1,200
Amendment	670
Inspections:	
Routine	860
Nonroutine	1,000
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application—New license	1,500
Renewal	860
Amendment	430
Inspections:	
Routine	740
Nonroutine	740
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	3,200
Renewal	1,900
Amendment	520
Inspections: [5]	
Routine	1,300
Nonroutine	2,700
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	540
Renewal	540
Amendment	410
Inspections:	
Routine	1,300
Nonroutine	1,300

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	3,000
Renewal	2,000
Amendment	210
Inspections:	
Routine	2,200
Nonroutine	1,700
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	2,000
Renewal	1,000
Amendment	250
Inspections:	
Routine	1,700
Nonroutine	2,200
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	3,600
Renewal	2,100
Amendment	580
Inspections:	
Routine	860
Nonroutine	860
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
Inspections:	
Routine	740
Nonroutine	1,100
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	1,500
Renewal	1,500
Amendment	370
Inspections:	
Routine	1,300
Nonroutine	2,000
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	3,600
Renewal	850
Amendment	460
Inspections:	
Routine	1,300
Nonroutine	2,000
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	2,500
Renewal	2,200
Amendment	390
Inspections:	
Routine	1,700
Nonroutine	1,900
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	760
Renewal	1,100
Amendment	460
Inspections:	
Routine	1,100
Nonroutine	1,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	620
Renewal	430
Amendment	330

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
Inspections:	
Routine	740
Nonroutine	740
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	3,500
Amendment—each device	1,300
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	1,700
Amendment—each device	620
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	740
Amendment—each source	250
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	370
Amendment—each source	120
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	250
Renewal	250
Amendment	250
Inspections:	
Routine	Full Cost.
Nonroutine	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance:	
Routine	Full Cost.
Nonroutine	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter:	
Routine	Full Cost.
Nonroutine	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspection:	
Routine	Full Cost.
Nonroutine	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application—new license	8,000
Amendment	8,000
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8).	
Application—new license	4,900
Amendment	4,900
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
Application—new license	3,100
Amendment	3,100
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application-new license	1,200
Amendment	1,200
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	120
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (each filing of Form 241)	640
Renewal	N/A
Amendment	N/A
Inspections:	
Routine and nonroutine	(6)

[1] *Types of fees*—Separate charges as shown in the schedule will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and inspections. The following guidelines apply to these charges:.

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment fees*—

(1) Applications for amendments to licenses and approvals, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Separate charges will be assessed for each routine and nonroutine inspection performed, including inspections conducted by the NRC of Agreement State licensees who conduct activities in non-Agreement States under the reciprocity provisions of 10 CFR 150.20. Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. If a licensee holds more than one materials license at a single location, a fee equal to the highest fee category covered by the licenses will be assessed if the inspections are conducted at the same time, unless the inspection fees are based on the full cost to conduct the inspection. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 to which any applicable contractual support services costs incurred will be added. Licenses covering more than one category will be charged a fee equal to the highest fee category covered by the license. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g). See Footnote 5 for other inspection notes.

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of such Commission orders. However, fees will be charged for approvals issued pursuant to a specific exemption provision of the Commission's regulations under title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of this rule will be determined at the professional rates established for the June 20, 1984, January 30, 1989, July 2, 1990, and July 10, 1991, rules, as appropriate. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] For a license authorizing shielded radiographic installations or manufacturing installations at more than one address, a separate fee will be assessed for inspection of each location, except that if the multiple installations are inspected during a single visit, a single inspection fee will be assessed.

[6] Fees as specified in appropriate fee categories in this section.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES, AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101–Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388 (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841).

7. In § 171.5 the definition *nonprofit educational institution* is added to read as follows:

§ 171.5 Definitions.

* * * * *

Nonprofit educational institution means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

* * * * *

8. In § 171.11, paragraph (b) is revised to read as follows:

§ 171.11 Exemptions.

* * * * *

(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date would not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only the timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded.

* * * * *

9. In § 171.15, paragraphs (b)(3), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

* * * * *

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 20 of this chapter, or operating the Incident Response Center. The base FY 1992 annual fees for each operating power reactor subject to fees under this section and due before September 30, 1992, are shown in paragraph (d) of this section.

(c) * * *

(2) The FY 1992 surcharge to be added to each operating power reactor is $272,000. This amount is calculated by dividing the total cost for these activities ($29.7 million) by the number of operating power reactors (109).

(d) The FY 1992 part 171 annual fees for operating power reactors are as follows:

PART 171 ANNUAL FEES BY REACTOR CATEGORY [1]

[Fees in millions]

Reactor vendor	Number	Base fee	Added charge	Total fee	Estimated collections
Babcock/Wilcox	7	$2.866	.272	$3.138	$22.0
Combustion Eng	15	2.850	.272	3.122	46.8
GE Mark I	24	2.810	.272	3.082	74.0
GE Mark II	8	2.821	.272	3.093	24.7
GE Mark III	4	2.810	.272	3.082	12.3
Westinghouse	51	2.855	.272	3.127	159 5
Totals	109				339.3

[1] Fees assessed by reactor vendor will vary for plants west of the Rocky Mountains and for Westinghouse plants with ice condensers.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$55,700
Test reactor	55,700

* * * * *

10. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1992 as follows:

	Maximum annual fee per licensed category
Small businesses and small not-for-profit organizations (gross annual receipts):	
$250,000 to $3.5 million	$1,800
Less than $250,000	400
Private practice physicians (gross annual receipts):	
$250,000 to $1.0 million	1,800
Less than $250,000	400
Small governmental jurisdictions (including publicly supported educational institutions) (population):	
20,000 to 50,000	$1,800
Less than 20,000	400
Educational institutions that are not State or publicly supported, and have 500 employees or less	1,800

* * * * *

(4) The maximum annual fee (base annual fee plus surcharge) a small entity is required to pay for FY 1992 is $1,800 for each category applicable to the license(s).

(d) The FY 1992 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1,2,3]
1. Special nuclear material:	
A.(1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	

High enriched fuel	License No.	Docket No.	
Babcock and Wilcox	SNM-42	70-27	$2,170,000
Nuclear Fuel Services	SNM-124	70-143	2,170,000
Low Enriched Fuel:			
B&W Fuel Company	SNM-1168	70-1201	683,000
Combustion Engineering (Hematite)	SNM-33	70-36	683,000
Combustion Engineering (Windsor)	SNM-1067	70-1100	683,000
General Electric Company	SNM-1097	70-1113	683,000
Siemens Nuclear Power	SNM-1227	70-1257	683,000
Westinghouse Electric Co	SNM-1107	70-1151	683,000

Category of materials licenses	Annual Fees [1,2,3]
Surcharge	$155,250
A. (2) All other special nuclear materials licenses not included in 1.A.(1) above for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form	72,000
Surcharge	38,950
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	43,000
Surcharge	1,750
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,700
Surcharge	150
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	2,300
Surcharge	1,750
E. Licenses for the operation of a uranium enrichment facility	N/A [11]
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	381,000
Surcharge	155,250
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby modes	
Class I facilities [4]	167,500
Class II facilities [4]	73,200
Other facilities	58,600
Surcharge	150
B. Licenses which authorize only the possession, use and installation of source material for shielding	430
Surcharge	150
C. All other source material licenses	3,000
Surcharge	1,750
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	9,400
Surcharge	1,750
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	4,600
Surcharge	1,750
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radio pharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	10,900
Surcharge	1,750
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	3,800
Surcharge	150
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	2,500
Surcharge	150
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	4,600
Surcharge	150
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	16,400
Surcharge	150

Category of materials licenses	Annual Fees [1] [2] [3]
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	6,300
Surcharge	150
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	7,600
Surcharge	150
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	7,500
Surcharge	150
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	6,000
Surcharge	150
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to part 30 and 33 of this chapter for research and development that do not authorize commercial distribution	7,400
Surcharge	1,750
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	3,700
Surcharge	1,750
N. Licenses that authorize services for other licensees, except (1) licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	4,400
Surcharge	1,750
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	12,800
Surcharge	150
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,100
Surcharge	150
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 84,500
Surcharge	38,950
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	13,800
Surcharge	1,750
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
Surcharge	1,750
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,300
Surcharge	150
B. Licenses for possession and use of byproduct material for field flooding tracer studies	15,000
Surcharge	1,750
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	5,100
Surcharge	1,750
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	14,200
Surcharge	150
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40 and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [6]	12,200
Surcharge	1,750
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [6]	4,600
Surcharge	150
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,900
Surcharge	150
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	9,300
Surcharge	150
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,500
Surcharge	150
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,900
Surcharge	150

Category of materials licenses	Annual Fees [1] [2] [3]
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	990
Surcharge	150
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers	
Spent Fuel, High Level Waste and plutonium air packages	N/A [6]
Other Casks	N/A [6]
B. Approvals issued of 10 CFR Part 71 quality assurance programs	
Users and Fabricators	62,800
Users	1,500
Surcharge	150
11. Standardized spent fuel facilities	N/A [6]
12. Special Projects	N/A [6]
13. A. Spent fuel storage cask Certificate of Compliance	N/A [6]
B. General licenses for storage of spent fuel under 10 CFR 72.210	43,000
Surcharge	150
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation or site restoration activities pursuant to 10 CFR Parts 30, 40, 70, and 72	N/A [7]
15. Import and Export licenses	N/A [8]
16. Reciprocity	N/A [6]
17. Master materials licenses of broad scope issued to Government agencies	300,000
Surcharge	36,150
18. DOE Certificates of Compliance	[10] 1,200,000

[1] Amendments based on applications filed after October 1 of each fiscal year that change the scope of a licensee's program or that cancel a license will not result in any refund or increase in the annual fee for that fiscal year or any portion thereof for the fiscal year filed. The annual fee will be waived where the license is terminated prior to October 1 of each fiscal year, and the amount of the annual fee will be increased or reduced where an amendment or revision is issued to increase or decrease the scope prior to October 1 of each fiscal year.

If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration or approval held by that person. For those licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1993 through 1995, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the FEDERAL REGISTER for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are operating.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes all Certificates of Compliance issued to DOE.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is proposed for each category, except Category 18, for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $155,100 has been added to fee Categories 1.A.(1) and 2.A.(1); an additional charge of $38,800 has been added to fee Categories 1.A.(2) and 4.A.; an additional charge of $1,600 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.B., 4.C., 5.B., 6.A., and 7.B.; and an additional charge of $36,000 has been added to fee Category 17.

(2) To recoup those costs not recovered from small entities, an additional charge of $150 has been added to each fee Category, except Categories 1E, 10.A., 11., 12., 13.A., 14., 15., 16., and 18. Licensees who qualify as small entities under the provisions of § 171.16(c) and who submit a completed NRC Form 526 are not subject to the $150 additional charge.

11. In § 171.19, paragraph (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1992 through FY 1995, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest shall accrue from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1992 through 1995, annual fees in the amount of $100,000 or more and described in the **Federal Register** Notice pursuant to § 171.13, shall be paid in quarterly installments of 25 percent. A quarterly installment is due on October 1, January 1, April 1 and July 1 of each fiscal year. Annual fees of less than $100,000 shall be paid once a year.

Dated at Rockville, Maryland this 8th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government

jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). The NRC size standards are as follows:

(1) A small business is a business with annual receipts of $3.5 million or less except private practice physicians for which the standard is annual receipts of $1 million or less.

(2) A small organization is a not-for-profit organization which is independently owned and operated and has annual receipts of $3.5 million or less.

(3) Small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.

(4) A small educational institution is one that is (1) supported by a qualifying small governmental jurisdiction, or (2) one that is not state or publicly supported and has 500 employees or less.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. For FY 1991, the amount to be collected was approximately $445 million, and for FY 1992, the amount to be collected is approximately $492.5 million.

To comply with OBRA-90, the Commission proposed amendments to its fee regulations in 10 CFR parts 170 and 171 on April 12, 1991 (56 FR 14870). On the basis of a careful evaluation of over 400 comments, the Commission issued a final rule on July 10, 1991 (56 FR 31472). This final rule established the methodology to be used in identifying the fees to be assessed and determined the fees that were assessed and collected in FY 1991. Consistent with the Conference Committee Report accompanying OBRA-90, the NRC fairly and equitably allocated its budget costs. This resulted in the assessment of annual fees for all classes of licensees, including those classes of licensees with a substantial number of small entities. Using the same methodology established in the FY 1991 rulemaking, the NRC published a proposed rule on April 29, 1992 (57 FR 18095), that would establish the fees to be assessed for FY 1992.

II. Impact on Small Entities

The comments received on the proposed FY 1991 fee rule revisions and the small entity certifications received in response to the final FY 1991 fee rule indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, the NRC estimates that about 25 percent (approximately 2,000 licensees) qualify as small entities. Therefore, in recognition of this substantial number of small entities, the NRC requested comments from small entities on the proposed FY 1991 rule. Comments were specifically requested on (1) how the proposed regulations would affect each class of licensee and (2) how the regulations could be structured to further minimize the economic impact on the licensee but still meet the statutory mandate of OBRA-90.

For materials licensees, the increase in fees assessed in FY 1991 consisted of (1) an increase of 25 percent in the license and inspection fees assessed under 10 CFR part 170 and (2) a new annual fee assessed under 10 CFR part 171 that ranged from $290 to over $10,000. A number of small entities indicated that the 25 percent increase in license and inspection fees, although not desirable, would not have a significant economic impact on them. However, many other materials licensees commented that the new annual fee would have a negative economic impact on them. Therefore, the regulatory flexibility analysis prepared for the July 10, 1991, final rule, as well as this regulatory flexibility analysis, concentrates on the annual fee.

The commenters on the FY 1991 proposed fee rule indicated the following results if the proposed annual fees were not modified:

—Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Although it was not clear to what extent these impacts would materialize at the time the July 10, 1991, final rule was promulgated, it was clear that the assessed annual fees would be a relatively high portion of the gross revenues of some licensees and far less of a portion for other larger material licensees. After the final rule was published, approximately 2,000 license, approval, and registration terminations were requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be

combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

Members of Congress, in many of the more than 100 Congressional letters the NRC has received since the July 10, 1991, final rule was published, have expressed concern about the size of the NRC annual fees and their economic impact on small entities. Some of these letters have suggested that the Commission should act to further reduce the economic impact on those licensees who conduct limited operations. The Small Business Administration (SBA), while commending the Commission for complying with and using the RFA in the final rulemaking, suggested that the Commission should act to further alleviate the impact of the fees on small businesses. The American Nuclear Society (ANS) also expressed concern about the impact of the annual fees on small entities and suggested that the Commission examine alternatives to further reduce the impacts.

Therefore, the NRC considered additional alternatives, in accordance with the RFA, to alleviate the continuing significant impact of the annual fees on a substantial number of small entities.

III. Alternatives

Commenters on the proposed rule published April 12, 1991, and comments received subsequent to publication of the final rule on July 10, 1991, and comments received on the limited amendments to the fee schedules published as a final rule on April 17, 1992 (57 FR 13625) suggested alternatives to reduce the impact on small entities. These comments are categorized as follows:

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
—Base fees on the NRC size standards for small entities.

The first alternative would result in the annual fee being in direct proportion to the amount of radioactivity (e.g., number of radioactive sources) possessed by the licensee, independent of whether the licensee meets the size standard for a small business. Thus, a large diversified firm that owns one source would get a reduced fee, while a small entity, whose business may depend solely on the use of radioactive materials, would pay a larger fee because it has more than one source. Thus, this alternative does not necessarily achieve the goal of the RFA to minimize the impact on small entities. The NRC also believes that this approach would not result in a fair and equitable allocation of its generic and other costs not recovered under 10 CFR part 170. Therefore, the NRC rejected this approach.

For similar reasons, the second suggested alternative, basing the fee on the frequency of use of the licensed radioactive source, would not necessarily reduce the cost for small entities that meet the size standards discussed earlier. Therefore, the NRC also rejected this approach.

The last alternative would base fees on the size standards that the NRC has used to define small entities. This alternative would ensure that any benefits from modifying the proposed fees would apply only to small entities. Three basic options, each using the NRC size standards, were considered for modifying the annual fees imposed on small entities:

(1) Exempt all small entities which meet the size standards from annual fees.

(2) Require small entities to pay a fixed percent of the amount of the fee in each of the specific material license fee categories.

(3) Establish a maximum fee for small entities.

Under Option 1, all small entities would be exempted from fees. However, because small entities would not pay any of the generic costs attributable to their class of licensees, this option could be viewed as inconsistent with the objectives of OBRA–90. Under this option, all the annual fees attributable to small entities would be paid by other NRC licensees.

Under Option 2, small entities would pay a percentage (e.g., 50 percent) of the proposed fee for each specific category of materials license, regardless of how small or large the fee is. This option could result in a reduction in annual fees that are already relatively small and that do not have a significant impact on a substantial number of small entities. However, for those fee categories assessed large annual fees, the percentage of reduction may result in assessing small entities licensed under those fee categories relatively large annual fees.

Option 3 would establish a maximum fee for all small entities. Under this option, a small entity would pay either the smaller of the annual fee for the category or the maximum small entity fee. This alternative strikes a balance between the requirements of OBRA–90 and the RFA, which are to consider and reduce, as appropriate, the impact of an agency's regulatory actions on small entities. Therefore, the NRC has adopted Option 3 as the most appropriate to reduce the impact on small entities. Commenters on the proposed fee rule for FY 1992 did not present alternatives that have not been considered previously.

IV. Maximum Fee

To implement Option 3, the NRC established a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist in determining the amount or the percent of gross receipts that should be charged to a small entity. To determine a maximum annual fee for a small entity, the NRC examined the NRC 10 CFR part 170 license and inspection fees established in 1991 and the 1991 Agreement State fees for those fee categories that are expected to have a substantial number of small entities. Because these fees have been charged to small entities, the NRC believes that these fees do not have a significant impact on them. In fact, the NRC concluded, in issuing the July 10, 1991, final rule, that the existing materials license and inspection fees do not have a significant impact on small entities. This conclusion remains valid for the FY 1992 fee rule.

The maximum fees per year charged in 1991 by several Agreement States and by the NRC for materials license fee categories with a significant number of small entities are shown below.

	1991 Maximum average total fee per year
Washington	$3,760
Texas	2,100
Illinois	2,000
NRC	1,590
Nebraska	1,460
New York	1,030
Utah	440

Table 1 presents the estimated total fees (part 170 plus part 171) for materials licensees, assuming maximum annual fees for small entities of $2,000 or $1,500 and an average number of licensing actions and inspections per year. If the maximum annual fee for small entities is established at $2,000, the average fee per year for all of the categories would be below the approximately $3,800 maximum fee charged by Agreement States, except for radiography, waste receipt and packaging, and broad-scope medical licensees. The broad-scope medical, and waste receipt and packaging licensees are primarily large entities. Therefore, with a $2,000 maximum small entity annual fee and the average license and inspection fees, only small entities who are radiographers would pay slightly more than the current maximum Agreement State fee of approximately $3,800. If the maximum fee is reduced by $200 (from $2,000 to $1,800), then all categories of materials licensees, including radiographers, would pay no more for each category than the 1991 maximum Agreement State fee of about $3,800 if the licensee qualifies as a small entity.

By establishing the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1991 costs ($22.3 million of the total $27.2 million) attributable to them. Therefore, the NRC has established and will continue, for FY 1992, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity. Note that the costs not recovered from small entities are allocated to other materials licensees and to operating power reactors.

While reducing the impact on many small entities, the Commission agrees that the current maximum annual fee of $1,800 for small entities, when added to the Part 170 license and inspection fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the Commission has further reduced the impact on small entities with relatively low gross annual receipts.

Commenters have suggested that the NRC could reduce the impact of the fees for materials licensees by basing them on the licensee's nuclear capacity (e.g., the number of sources possessed, the number of hospital beds, or the amount of radioactive material possessed), or the frequency of use of the radioactive material. In adopting the July 10, 1991, final rule, the Commission recognized that inherent differences exist in the nuclear capacity and the frequency of source use for many of the classes of materials licensees. However, as indicated in Section III of this analysis, the Commission concludes that basing the fee on the number of sources, frequency of use, or amount of radioactive material possessed does not necessarily reduce the impact of the fees on small entities, which is the goal of the RFA. The Commission continues to believe that uniformly allocating the generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair and equitable way to recover its costs and that establishing reduced annual fees based on gross receipts (size) is the most appropriate approach to minimize the impact on small entities. Consistent with this approach, the Commission will continue the $1,800 maximum annual fee for small entities. In addition, the Commission has created a lower tier annual fee for small entities with relatively small gross annual receipts or with a relatively small population (57 FR 13625; April 17, 1992).

To implement this action, relatively small annual receipts were defined. Based on data from an NRC survey of materials licensees and the Department of Commerce industry census, the following data shows the distribution of businesses with annual gross receipts of less than $3.5 million.

Annual gross receipts	NRC Survey (%)	Department of Commerce
Less than $250K	45	55
$250-$499K	14	22
$500-$749K	8	6
$750-$999K	9	6
$1,000-$3,500K	24	11

As shown, 45 to 55 percent (or about 50%) of small businesses with gross annual receipts of less than $3.5 million have gross annual receipts that are less than $250,000. Thus, by defining relatively small gross annual receipts as less than $250,000, a significant number of small entities would be eligible for a further reduction of the impact of the annual fees. This level would also help ensure that those small businesses which probably would be impacted the most would pay the lower fee.

A similar approach was used to define a relatively small governmental jurisdiction. Using 1990 data from the National Association of Counties, the distribution for counties located in non-Agreement States with a population of less than 50,000 shows that a population level of less than 20,000 would ensure that at least 50 percent of the small counties would be eligible for reduced fees (See the data presented below). This would also ensure that at least 50 percent of other governmental jurisdictions (cities, towns, villages, school districts, etc.) could also receive the benefits because these other jurisdictions are typically smaller than counties.

Population	Percent of total
Less than 5,000	10
5,000-9,999	18
10,000-14,999	16
15,000-19,999	14
20,000-24,999	9
25,000-50,000	33

The NRC also determined the amount of the annual fee that should be assessed to lower tier small entities (less than $250,000 for small businesses and small non-profit organizations, or less than 20,000 population for small governmental jurisdictions). In establishing the annual fee for lower tier small entities, the Commission retained a balance between the objectives of the RFA and OBRA-90. This balance can be measured by (1) the amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower tier small entity. Nuclear gauge users were used to measure the reduction in fees because they represent about 40 percent of the materials licensees and most likely would include a larger percentage of lower tier small entities than would other classes of materials licensees.

Before presenting alternative fees, the NRC notes that the number of licensees filing small entity certifications for the FY 1991 annual fees is lower than originally estimated. The NRC estimated 3,000 certifications in the July 10, 1991, rule, which would have resulted in an estimated cost of about $5 million in the small entity subsidy. On the basis of the response to the FY 1991 billings, the NRC's estimate is now that there are about 2,000 small entities.

The following data shows four different lower tier small entity fees, their impact on the licensees, and their impact on the balance between OBRA-90 and RFA.

Alternative lower tier small entity annual fee	Reduction in fee for gauge users (%)	Estimated FY 1992 small entity subsidy ($ M)	Estimated FY 1992 annual fees paid by small entities ($ M)
$1,200	30	$5.0	$4.5
900	50	5.3	4.2
700	60	5.5	4.0
400	75	6.0	3.5

Each of the alternative lower tier annual fees reduces the annual fee for qualifying nuclear gauge licensees. However, the Commission established an annual fee of $400 for the lower tier small entities because this amount should ensure that the lower tier small entities receive a reduction (75 percent for small gauge users) substantial enough to mitigate any severe impact. The amount of the small entity subsidy resulting from this fee is equivalent to the amount estimated in the July 10, 1991, final rule, increased by 20 percent to account for the FY 1992 budget increase and the reduced number of materials licensees resulting from license terminations after the FY 1991 rule became effective. Although the other reduced fees would result in lower subsidies, the Commission believes that the amount of the associated annual fees, when added to the license and inspection fees, would still be considerable for small businesses and organizations with gross receipts that are less than $250,000 or for governmental entities in jurisdictions with a population of less than 20,000.

V. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analysis and the April 17, 1992, final rule the NRC concluded that a maximum annual fee of $1,800 for small entities and a lower tier small entity annual fee of $400 for small businesses and non-profit organizations with gross annual receipts of less than $250,000, and small governmental entities with a population of less than 20,000, will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991 fee rule in this rule establishing the FY 1992 fees. Therefore, the analysis and conclusions established in the FY 1991 rule remain valid for this final rule.

TABLE 1.—1991 AVERAGE TOTAL SMALL ENTITY FEES PER YEAR

License fee category	Total small entity fee [1]	
	Max annual fee = $2K	Max annual fee = $1.5K
Special Nuclear Material (SNM):		
1C. Industrial Gauges	$1,672	$1,672
ID. All other SNM	2,506	2,006
Source Material:		
2B. Shielding	463	463
2C. Other Source Materials	2,867	2,367
Byproduct Material:		
3A. Manufacturing—Broad	3,560	3,060
3B. Manufacturing—Other	3,343	2,843
3C. Radiopharmaceuticals	3,207	2,707
3D. Radiopharmaceuticals—Manufacturing	2,677	2,177
3E. Irradiators—Self-shield	1,699	1,699
3F. Irradiators—<10,000 Ci	2,623	2,123
3G. Irradiators—>10,000 Ci	3,840	3,340
3H. Exempt distribution—Device review	2,815	2,315
3I. Exempt distribution—No device review	2,682	2,182
3J. Gen. license—Device review	2,679	2,179
3K. Gen. license—No device review	2,708	2,208
3L. R&D—Broad	3,210	2,710
3M. R&D—Other	3,050	2,550
3N. Service license	2,733	2,233
3O. Radiography	4,050	3,550
3P. All other byproduct materials	2,120	2,120
Waste Disposal and Processing:		
4B. Waste receipt/packaging	4,680	4,180
4C. Waste receipt—prepackaged	3,216	2,716
Well Logging:		
5A. Well logging	3,207	2,707
Nuclear Laundry:		
6A. Nuclear laundry	3,030	2,530
Human Use of Byproduct, Source, or SNM:		
7A. Teletherapy	3,788	3,288
7B. Medical—broad	4,360	3,860
7C. Medical other	3,130	2,630
Civil Defense:		
8A. Civil defense	1,789	1,789
Device, Product, or Sealed Source Safety Evaluation:		
9A. Device/product—Broad	3,200	2,700
9B. Device/product—Other	2,580	2,080
9C. Sealed sources—Broad	1,530	1,530
9D. Sealed sources—Other	770	770

[1] Based on average 10 CFR part 170 fees plus maximum annual fees.

[FR Doc. 92–17027 Filed 7–23–92; 8:45 am]
BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–ASO–15]

Alteration of VOR Federal Airway V–157

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the description of VOR Federal Airway V–157 located in the States of North Carolina and South Carolina. The final rule was published in the **Federal Register** on June 18, 1992 (57 FR 27158). During the time period prior to publication, the name of the VOR at Kenton, DE, was changed to Smyrna,

DE, in Airspace Docket No. 92–AEA–4, effective June 25, 1992 (57 FR 19083). The name change was not reflected in the final rule. This action reflects that name change in the description of V–157.

EFFECTIVE DATE: 0901 u.t.c., August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

A final rule was published in the **Federal Register** on June 18, 1992 (57 FR 27158), with an effective date of August 20, 1992, that revised the description of VOR Federal Airway V–157 in the States of North Carolina and South Carolina. The airway's continuity was interrupted by a 130-mile gap between Florence, SC, and Kinston, NC. After this docket was published in the **Federal Register**, it was noted that the name of the Kenton VOR had been changed to the Smyrna VOR. This action corrects the name of the Kenton VOR to Smyrna VOR in the description of V–157. The prior description of the airway designation listed in this document is published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended designation of the airway listed in this document will be published subsequently in section 71.123 of the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations corrects the description of VOR Federal Airway V–157 by reflecting the name change of the Kenton, DE, VOR to the Smyrna, DE, VOR. Accordingly, since this action merely involves a minor change and does not involve a change in the actual dimensions, configuration, or operating requirements of airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation.

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–157 [Revised]

From Key West, FL; Miami, FL; INT Miami 337° and La Belle, FL, 124° radials; La Belle; Lakeland, FL; Ocala, FL; Gainesville, FL; Taylor, FL; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–2901A and R–6602A is excluded. The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated. The airspace within R–4005 and R–4006 is excluded.

* * * * *

Issued in Washington, DC, on July 16, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–17367 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26917; Amdt. No. 1499]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 3, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective October 15, 1992*

Barnesville, OH, Barnesville-Bradfield, VOR RWY 27, Amdt.11
St. Clairsville, OH, Alderman, VOR–A, Amdt. 3
Woodsfield, OH, Monroe County, VOR/DME RWY 25, Amdt. 6

* * * *Effective August 20, 1992*

Russellville, AR, Russellville Muni, NDB–1, Amdt. 4
Santa Monica, CA, Santa Monica Muni, LDA/DME RWY 21, Amdt. 1
Frankfort, IN, Frankfort Muni, NDB RWY 4, Amdt. 4, CANCELLED
Ludington, MI, Mason County, NDB RWY 25, Orig.
Ludington, MI, Mason County, NDB RWY 25, Amdt. 8, CANCELLED
Columbia, MO, Columbia Regional, VOR RWY 13, Amdt. 2
Columbia, MO, Columbia Regional, VOR RWY 20, Amdt. 3
Columbia, MO, Columbia Regional, VOR/DME RWY 20, Amdt. 2
Columbia, MO, Columbia Regional, LOC BC RWY 20, Amdt. 11
Columbia, MO, Columbia Regional, NDB RWY 2, Amdt. 8
Columbia, MO, Columbia Regional, ILS RWY 2, Amdt. 12
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt. 9
Cleveland, OH, Cuyahoga County, NDB RWY 23, Amdt. 6
Connellsville, PA, Connellsville, VOR–A, Amdt. 1 CANCELLED
Somerset, PA, Somerset County, RNAV RWY 24, Amdt. 1, CANCELLED
Washington, PA, Washington County, VOR–A, Amdt. 4, CANCELLED
Burlington/Mount Vernon, WA, Skagit Regional/Bay View, NDB RWY 10, Amdt. 2

* * * *Effective July 23, 1992*

Frankfort, IN, Frankfort Muni, NDB RWY 9, Orig.

* * * *Effective June 30, 1992*

Huntsville, AL, Huntsville Intl-Carl T. Jones Field, ILS RWY 36L, Amdt. 8

* * * *Effective June 25, 1992*

Cody, WY, Yellowstone Regional, VOR–A, Amdt. 6

* * * *Effective June 24, 1992*

Oklahom City, OK, Will Rogers World, NDB RWY 17R, Amdt. 23.

FR Doc. 92–17358 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 26918; Amdt. No. 1500]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore-(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on July 3, 1992

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
06/22/92	IL	Carbondale/Murphysboro	Southern Illinois	FDC 2/3494	ILS Rwy 18L Amdt 12 . . .
06/22/92	IL	Carbondale/Murphysboro	Southern Illinois	FDC 2/3495	VOR-A Amdt 5 . . .
06/22/92	IL	Carbondale/Murphysboro	Southern Illinois	FDC 2/3496	NDB Rwy 18L Amdt 12 . . .
06/24/92	AK	Sitka	Sitka	FDC 2/3545	LDA/DME Rwy 11 Amdt 10 . . .
06/25/92	NJ	Newark	Newark Intl	FDC 2/3572	NDB Rwy 4L Amdt 9 . . .
06/29/92	AR	Helena/West Helena	Thompson-Robbins	FDC 2/3672	NDB Rwy 17 Amdt 3 . . .
06/29/92	CT	New Haven	Tweed-New Haven	FDC 2/3670	VOR Rwy 2 Amdt 1 . . .
06/29/92	CT	New Haven	Tweed-New Haven	FDC 2/3671	VOR Rwy 2 Amdt 21 . . .
06/30/92	CT	New Haven	Tweed-New Haven	FDC 2/3708	ILS Rwy 2 Amdt 14 . . .
07/01/92	VA	Wise VA. SDF Rwy 24 Amdt 2	Linsome Pine	FDC 2/3731	ILS Rwy 23 Amdt 6A . . .

NFDC Transmittal Letter Attachment

Sitka

Sitka
Alaska
LDA/DME Rwy 11 Amdt 10...
Effective: 06/24/92

FDC 2/3545/SIT/FI/P Sitka, Sitka, AK. LDA/DME Rwy 11 Amdt 10...MIN ALT 2200 From I–SIT LDA W CRS 10.9/12.1 DME TO I–SIT LDA W CRS 8 DME. This becomes LDA/DME Rwy 11 Amdt 10A.

Helena/West Helena

Thompson-Robbins
Arkansas
NDB Rwy 17 Amdt 3...
Effective: 06/29/92

FDC 2/3672/HEE/FI/P Thompson-Robbins, Helena/West Helena, AR. NDB Rwy 17 Amdt 3...S–17 MDA 1100/HAT 860 All CATS. Circling MDA 1100/HAA 858 All CATS. This is NDB Rwy 17 Amdt 3A.

New Haven

Tweed-New Haven
Connecticut
VOR Rwy 2 Amdt 1...
Effective: 06/29/92

FDC 2/3670/HVN/FI/P Tweed-New Haven, New Haven, CT. VOR Rwy 2 Amdt 1...Change Note to read..."When CTLZ not in effect use ISLIP ALSTG MIN." Change Altn MIN...NA when CTLZ not in effect. This is VOR–A Amdt 1A.

New Haven

Tweed-New Haven
Connecticut
VOR Rwy 2 Amdt 21...
Effective: 06/29/92

FDC 2/3671/HVN/FI/P Tweed-New Haven, New Haven, CT. VOR Rwy 2 Amdt 21...Change Note to read..."INOP table does not apply. When CTLZ not in effect use ISLIP ALSTG MIN." Change Altn MIN...NA when CTLZ not in effect. This is VOR Rwy 2 Amdt 21A.

New Haven

Tweed-New Haven
Connecticut
ILS Rwy 2 Amdt 14...
Effective: 06/30/92

FDC 2/3708/HVN/FI/P Tweed-New Haven, New Haven, CT. ILS Rwy 2 Amdt 14...Change Note to read..."Inoperative Table does not apply. When CTLZ not in effect, use ISLIP altimeter setting minimums." Change Alternate minimums...NA When CTLZ not in effect. This is ILS Rwy 2 Amdt 14A.

Carbondale/Murphysboro

Southern Illinois
Illinois
ILS Rwy 18L Amdt 12...
Effective: 06/22/92

FDC 2/3494/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. ILS Rwy 18L Amdt 12...Delete Note...When Control Tower closed...Thru...HIRLS Rwy 18L–36R. Add note...When control tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete Note...When Control Zone...thru...Girardeau Altimeter Setting. Add Note...When Control Tower closed, except for operators with approved weather reporting service, use Cape Girardeau altimeter setting. This is ILS Rwy 18L Amdt 12A.

Carbondale/Murphysboro

Southern Illinois
Illinois
VOR–A Amdt 5...
Effective: 06/22/92

FDC 2/3495/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. VOR–A Amdt 5...Delete Note...When Control Tower closed...Thru. . HIRLS Rwy 18L–36R. Add Note...When Control Tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete note...When Control Zone...Thru...Girardeau Altimeter setting. Add Note...When Control Tower closed, expect for operators with approved weather reporting service, use Cape Girardeau altimeter setting. This is VOR–A Amdt 5A.

Carbondale/Murphysboro

Southern Illinois
Illinois
NDB Rwy 18L Amdt 12...
Effective: 06/22/92

FDC 2/3496/MDH/ FI/P Southern Illinois, Carbondale/Murphysboro, IL. NDB Rwy 18L Amdt 12...Delete note...When Control Tower closed...Thru...HIRLS Rwy 18L–36R. Add Note...When Control Tower closed, prior arrangements required for MIRLS/REILS Rwy 6/24, MIRLS Rwy 18R/36L. Delete Note...When Control Zone...Thru...Girardeau altimeter setting. Add Note...When Control Tower closed, except for operations with approved weather reporting service, use Cape Girardeau altimeter setting. This is NDB Rwy 18L Amdt 12A.

Newark

Newark Intl.
NJ.
NDB Rwy 4L Amdt 9...
Effective: 06/25/92

FDC 2/3572/EWR/ FI/P Newark Intl, Newark, NJ. NDB Rwy 4L Amdt 9...Change fix name Grity to Embay. This becomes NDB Rwy 4L Amdt 9A.

Wise Va. SDF RWY 24 AMDT 2...

Linsome Pine
Effective: 06/25/92

FDC 2/3552/LNP/FI/P Linsome Pine, Wise, VA. SDF Rwy 24 Amdt 2...Missed approach...Climbing right turn to 4500 VIA I–OWN LDA NE Course to STRYP Int and hold. This becomes SDF Rwy 24 Amdt 2A.

Norfolk

Norfolk Intl
Virigina
ILS Rwy 23 Amdt 6A...
Effective: 07/01/92

FDC 2/3731/ORF/ FI/P Norfolk Intl, Norfolk, VA. ILS Rwy 23 Amdt 6A...Delete note...Autopilot coupled APCH NA below 450'. This becomes ILS Rwy 23 Amdt 6B.

[FR Doc. 92–17359 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises portions of the Postal Service regulations on Inspection Service authority to include the criteria listed in the Department of Justice regulations pertaining to petitions for remission and mitigation, to clarify the time for filing a Petition for Remission or Mitigation of Forfeiture, and to describe more accurately the purpose of the Petition for Restoration of Proceeds of Sale.

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Fred I. Rosenberg, (202) 268–5477.

SUPPLEMENTARY INFORMATION: Section 233.7(j)(2) is revised to clearly outline the information that must be included in a Petition for Remission or Mitigation. The revision includes criteria for remission listed in 28 CFR 9.5. In addition, the last sentence of paragraph (j)(2) has been deleted.

The first sentence of § 233.7(j)(4) is amended to substitute the word "should" for the word "must." There is no requirement that a Petition for Remission or Mitigation be filed within 30 days from the date of the personal notice letter or within 30 days from the date of publication. A Petition for Remission or Mitigation may be filed at any time prior to disposition of the property by the Postal Service. After the property has been disposed of, a Petition for Restoration of Proceeds of Sale or for the appraised value of the forfeited property (when the forfeited property has been retained or delivered for official use of a government agency) may be filed.

The second sentence of paragraph (j)(4) is amended to more accurately describe the exact purpose of the Petition for Restoration of Proceeds of Sale.

List of Subjects in 39 CFR Part 233

Crime, Forfeiture, Postal Service.

In consideration of the foregoing, 39 CFR part 233 is amended as set forth below.

PART 233—[AMENDED]

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254; 21 U.S.C. 881.

2. Section 233.7 is amended by revising paragraphs (j)(2) and (4) to read as follows:

§ 233.7 Forfeiture authority and procedures.

* * * * *

(j) * * *

(2)(i) All such Petitions must include, at a minimum, the following:

(A) A complete description of the property, including model and serial numbers, if any;

(B) The date and place of seizure;

(C) The Petitioner's interest in the property, which must be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(D) Any facts and circumstances, established by satisfactory proof, relied upon by the Petitioner to justify the granting of the Petition.

(ii) The Postal official in charge of the decision (determining official) shall not consider whether the evidence is sufficient to support the forfeiture but shall presume a valid forfeiture.

(iii) *Remission.* The determining official shall not remit a forfeiture unless the petitioner establishes:

(A) That petitioner has a valid, good faith interest in the seized property as owner or otherwise; and

(B) That petitioner had no knowledge that the property in which petitioner claims an interest was or would be involved in any violation of the law; and

(C) That petitioner had no knowledge of the particular violation which subjected the property to seizure and forfeiture; and

(D) That petitioner had no knowledge that the user of the property had any record for violating laws of the U.S. or of any State for a related crime; and

(E) That petitioner had taken all reasonable steps to prevent the illegal use of the property.

(iv) *Mitigation.* In addition to having the discretionary authority to grant relief by way of complete remission of forfeiture, the determining official may, in the exercise of discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner, and shall be deposited as an amount realized from forfeiture in accordance with 39 U.S.C. 2003(b)(7).

* * * * *

(4) A Petition for Remission or Mitigation of forfeiture should be filed within thirty days from the date of the personal notice letter or within thirty days from the date of publication notice. After property is disposed of, a Petition for Remission or Mitigation of forfeiture will no longer be accepted; thereafter, a Petition for Restoration of Proceeds of Sale, or for the appraised value of the forfeited property, when the property has been retained or delivered for official use by a government agency, may be filed. Such Petition shall be filed within ninety days of the sale of the property, or within ninety days of the date the property is placed in official use.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92–17400 Filed 7–22–92; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4157–5]

California; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of California for final authorization.

SUMMARY: California has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed California's application and has reached a final determination that California's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to California to operate its program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: Final authorization for California shall be effective at 1 p.m. on August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deirdre Nurre, H–2–3, Program Development Section, EPA, 75 Hawthorne St., San Francisco, CA 94105; (415) 744–2106.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b), 42 U.S.C. 6926(b)).

On December 20, 1991, California submitted an official application for final authorization to administer the RCRA program. On May 1, 1992, EPA published a tentative determination announcing its intent to grant California final authorization. Further background on the tentative decision to grant authorization appears at Vol. 57, No. 85, FR 18827 to 18829, May 1, 1992.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application. On May 27, 1992, EPA published a notice extending the public comment period and rescheduling the public hearing. The public hearing was held on June 15, 1992.

B. Comments/Responses

EPA received one oral comment, supplemented in writing, and twenty (20) letters containing written comments during the public comment period. Some of the letters expressed support for EPA's tentative determination. The significant issues raised by the commenters and EPA's responses are summarized below.

1. *Comment:* EPA received numerous comments relating to the transportation of hazardous waste in light of the new standard for preemption of State regulation of hazardous waste transportation under the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA). The comments generally asserted that some portion of the State's regulations governing transportation of waste were inconsistent with and should be preempted by federal law. Specific issues included the State's requirements on the use of a cover manifest form, the reporting of spills, transfer facilities, vehicle inspection and marking, extremely hazardous waste, and the State's use of fees.

Response: The Hazardous Materials Transportation Uniform Safety Act of 1990 amended the Hazardous Materials Transportation Act (HMTA), by adding a new subsection which preempted many State and local regulations of hazardous materials transportation if the State and local regulations were not substantively the same as the federal regulation of the subject. The Department of Transportation's (DOT) final regulation explaining the relevant standard stated that " 'substantively the same' means that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted." 49 CFR 107.202. DOT has stated that "substantively the same" does not mean "identical." 57 FR at 20425. DOT cited legislative history which explained that "the state law must have the same effect as the Federal law." Id.

The regulations also established a procedure whereby any person affected by a requirement may apply for a determination as to whether the requirement is preempted and a procedure whereby a State could apply for a waiver of the preemption.

Although EPA has considered each of the specific comments raised with respect to this standard to determine whether the requirement renders the State program "inconsistent" with the Federal program (including regulations governing tracking of hazardous waste), EPA does not believe that it is appropriate to use the authorization process to make the specific determinations of inconsistency where the DOT has established procedures both for establishing inconsistency and providing waivers from preemption. The "inconsistency" is not related to RCRA authorities, but to another statute. A possible issue of preemption under the HMTUSA would not affect the program's eligibility for RCRA authorization.

2. *Comment:* Several commenters stated that the requirement of California Health and Safety Code Section 25160, which requires the use of a manifest cover form when hazardous waste is shipped out of California to a state which requires the use of its own manifest form is preempted by the Hazardous Materials Transportation Act.

Response: The form referred to by the commenters is a half-page form which repeats certain information contained on a portion of the California uniform manifest. Although EPA lacks authority to resolve preemption issues under the Hazardous Materials Transportation Act, as amended, it notes that RCRA rules also prohibit other forms from traveling with the uniform national hazardous waste manifest. See, for example, 40 CFR 271.10(f). The State, however, has assured EPA that the cover form need not accompany the manifest and hazardous waste shipment. Rather, the generator may simply submit the cover form to the State agency.

3. *Comment:* Several commenters stated that California's regulations on the management of extremely hazardous waste impose additional burdens on transporters inconsistent with the HMTA.

Response: EPA has reviewed the regulations identified by the commenters. The regulations do not appear to impose any additional paperwork or other restrictions on the transportation of hazardous waste. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for RCRA authorization.

4. *Comment:* Several commenters complained of the regulation of hazardous waste transportation by the California Public Utilities Commission (CPUC).

Response: The commenters did not identify any specific action of the CPUC which is inconsistent with federal law or with authorization of the Department of Toxic Substances Control (DTSC) to operate the RCRA program. This issue is not a "consistency" issue for RCRA. There may be a preemption issue under the HMTUSA. However, it does not affect the eligibility of the program for authorization.

5. *Comment:* One commenter stated that the description of regulation of hazardous waste transportation contained in the California application "appears" to be incomplete. It also stated that the California application is incomplete because it does not discuss proposed regulations.

Response: Since the proposed regulations have not yet been adopted and are not part of the existing program for which the State is seeking authorization, EPA does not agree that the failure to discuss this matter affects the completeness of the State's application.

6. *Comment:* One commenter inquired "whether or not USEPA * * * intends to grant authority to California to adopt regulations affecting waste

transportation, which are far in excess of the USEPA and USDOT requirements?" (emphasis omitted). The commenter appeared to be objecting principally to the proposed requirement that transfer stations require permits.

Response: EPA agrees that a regulation preempted by any other Federal law is invalid. At this time, however, the regulations referenced by the commenter have not been adopted and are not part of the State's application. It also appears likely that any permit requirement for facilities not regulated under RCRA would be viewed as "broader in scope" and, therefore, not part of the authorized program. In the event the State adopts regulations which the commenter believes are inconsistent with the Hazardous Materials Transportation Act, the commenter has available the option of seeking an advisory inconsistency ruling from the Department of Transportation, which has jurisdiction over such matters.

7. *Comment:* One commenter stated that the State's requirement for a written report to be filed within 10 days of any incident which results in a spill or release of hazardous waste to the environment is inconsistent with the federal standard which requires that written reports be filed with the DOT within 30 days of the release of any quantity of hazardous waste during transportation.

Response: The regulation cited by the commenter is not part of the authorized program. Instead the specific requirement in 22 CCR 66263.41(h) relates solely to certain wastes not generally covered by RCRA requirements. DTSC regulations for reporting releases of RCRA hazardous waste are found in 22 CCR 66263.30 and are identical in all pertinent respects to the provisions of 40 CFR 263.30.

8. *Comment:* One commenter objected to the State regulations governing transfer facilities, noting that the State requires a permit for transfer facilities engaging in "break and bulk" activities or which hold hazardous waste for over 144 hours, suggesting that the permit requirement for these activities is a "prohibition" on these activities.

Response: The greater stringency of the State's program is not precluded by RCRA; if there is a preemption issue under HHTA, it should be resolved under the procedures governing such determinations. EPA does not agree that a permit requirement for some transfer facilities is a "prohibition"on these activities. EPA regulations limit the exemption from substantive and permitting regulations for transfer facilities to those facilities which hold hazardous waste less than ten days. 40 CFR 263.12.

9. *Comment:* One commenter objected to the State requirement that the California Highway Patrol conduct an annual inspection of vehicles and containers used to ship hazardous waste in the State. The commenter noted that the inspection requirement is identical to the federal annual highway vehicle inspection program found at 49 CFR 396.17. The commenter states that insofar as California attempts to enforce the inspection requirement against vehicles which have already been inspected under section 396.17, the DTSC requirements violate the Motor Carrier Safety Act. The commenter also argues that the requirement is a "candidate" for preemption under the Hazardous Materials Transportation Act.

Response: If there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The vehicle inspection program of the California Highway Patrol is not part of the authorized program.

10. *Comment:* One commenter stated that the State's requirements for inspecting and marking bulk containers that transport hazardous waste should be preempted under the HMTA.

Response: It there is an issue of possible preemption by other Federal laws, that issue does not affect the RCRA authorization standards. The container inspection program is not part of the authorized program.

11. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State "regulates down to zero generation," so that all waste shipped requires a manifest.

Response: The State is not altering the manifest form by this requirement; it is expanding the class of waste that requires a manifest to be shipped. RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State does not exempt conditionally exempt or other small quantity generators from the basic requirements of hazardous waste regulation. This regulatory decision by the State is allowed by federal law and is not inconsistent with the federal manifest program.

12. *Comment:* One commenter argued that the State manifest differs from federal regulation because the State identifies many wastes as hazardous which are not regulated as hazardous under RCRA.

Response: RCRA allows a State to adopt and enforce requirements which are more stringent and to operate a program broader in scope than is the case under federal requirements. 40 CFR 271.1(i). The State's decision to regulate additional hazardous wastes is allowed by federal law and is not inconsistent with the federal manifest program.

13. *Comment:* One commenter noted that the State requires that a motor carrier of hazardous waste must obtain authority from DTSC, but that RCRA itself does not require such an approval. The commenter concedes that "the HMTA recognizes that states may have legitimate needs to permit and register transporters of hazardous materials," but notes further that "upwards of 30 states impose requirements on transporters of hazardous waste."

Response: The requirement for transporters to obtain DTSC approval is broader in scope than RCRA and is not a part of the authorized program. The RCRA authorization process examines the adequacy and consistency of the State's authorities to implement RCRA; if there are preemption issues under other Federal laws, they do not affect the State's RCRA authorization. In addition, EPA does not believe that an individual State's authorization application is the appropriate forum to resolve problems which clearly affect a large number of states. As the commenter recognizes, a process is already in place intended to address the problem pursuant to the HMTUSA.

14. *Comment:* One commenter complained regarding alleged inequities in the collection of fees from motor carriers by DTSC and other State agencies.

Response: The collection of fees by the State is not part of the authorized program.

15. *Comment:* One commenter opposed authorization because of difficulties in siting new commercial hazardous waste incinerators. In addition to its own recent experience, the commenter referred to two other cases. In general, the commenter believes that the environmental review process conducted by local agencies in making land use decisions acts as a bar to the siting such facilities.

Response: EPA has reviewed the cases cited by the commenter and does not agree that they demonstrate that the State's processes act as a bar to siting new facilities. In one of the cases cited, the Vernon incinerator, the DTSC issued a hazardous waste facility permit. In both of the other cases, there were admitted deficiencies in the environmental review conducted by the

lead agency. In addition, RCRA is not intended to supplant the land use decisions of local authorities. EPA agrees that siting new facilities is a difficult task but is unable to conclude that the local land use decisionmaking process in California is unique in this regard.

16. *Comment:* One commenter argues that under Health and Safety Code § 25162, DTSC requires that California hazardous wastes shipped to another state must be managed at a hazardous waste treatment, storage, and disposal site even if the waste would not otherwise be regulated as hazardous in the receiving state. The commenter states that this requirement poses "an unambiguous restraint on the interstate movement" of such wastes.

Response: EPA has reviewed the cited statute and does not agree with the commenter's interpretation of the law. The cited provision also allows shipment of the waste to a facility if "The facility is authorized by the state in which it is located, pursuant to the applicable laws or regulations of that state, to accept the transported hazardous waste for transfer, handling, recycling, storage, treatment, or disposal." Health and Safety Code § 25162(a)(2). Thus, if the receiving state, allowed the waste to be received at a Subtitle D facility, the California statute would allow the disposal of the waste there, "pursuant to the applicable laws or regulations of that state." This requirement is consistent with EPA's "designated facility" definition at 40 CFR 260.10.

C. Decision

After reviewing the public comments and the administrative record, I conclude that California's application meets all of the requirements necessary to qualify for final authorization for the Federal RCRA program in effect as of July 8, 1984; for non-HSWA revision Clusters I, II, III, IV, V, and VI; and for HSWA cluster I and HSWA cluster II with the exception of Organic Air Emission Standards for Process Vents and Equipment Leaks (Rule Code 79). Accordingly, California is granted final authorization to operate its program as revised and approved herein in lieu of the Federal RCRA program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984(HSWA).

California has not sought the authority to operate the RCRA program on any Indian lands and is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

California now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. California also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008 and 3013 and 7003 of RCRA.

In several respects, California's regulation of hazardous waste is broader in scope than federal regulation. Unlike more stringent provisions which are enforceable by EPA as part of the authorized program, EPA may not enforce State provisions which are broader in scope. California "broader in scope" provisions fall principally in two categories: California regulates hazardous wastes which are not regulated under the Federal program, and California requires permits for certain classes of units which are exempt from regulation under federal law.

Hazardous wastes regulated under California but not federal law include certain non-aqueous corrosives (see 22 CCR 66261.22(a)(3 and 4)) and solid wastes which meet additional California characteristics for hazardous waste (see 22 CCR 6261.24(a)(2)(A & B) (toxicity standards for which there is no federal counterpart) and 22 CCR 66261.24(a)(3–8)(threshold standards)). In addition, California regulates used oil as hazardous waste (see Health and Safety Code §§ 25250, *et seq.*), and regulates certain wastes exempt under 40 CFR 261.6(a)(3).

A significant area in which the State permit program is broader in scope is the State requirement of permits for recycling units exempt from permitting under federal regulations. California does not recognize the federal exclusions from the permit requirement for small quantity generators, totally enclosed treatment units and wastewater treatment units (40 CFR 270.1(c)(iii–v)).

D. Effect of HSWA on California's Authorization

As stated above, California's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA to RCRA. Prior to that date, a State with final authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect immediately in all States regardless of their authorization status. EPA is directed to carry out those requirements and prohibitions. In authorized States, EPA implements the HSWA requirements or prohibitions, including the issuance of full or partial permits, until the State is granted authorization to do so. States must still adopt HSWA-related provisions as State law to retain final authorization.

As a result of HSWA, there will be a dual State/Federal regulatory program in California. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. (Please note that all permits issued by EPA prior to the State being granted final authorization will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or the permit otherwise expires or is revoked.) To the extent HSWA-related requirements are in effect, EPA will administer and enforce those portions of the HSWA in California until the State receives the authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once California is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect under State law; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a FR notice which explains in detail HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28768, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of California's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 13, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92-17404 Filed 7-22-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2740

[AA-320-4212-02 24 1A; Circular No. 2638]

RIN 1004-AA73

Recreation and Public Purposes Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations to implement the Recreation and Public Purposes Amendment Act of 1988 (Public Law 100-648) (hereafter referred to as the Act). This Act amended section 3 of the Act of June 14, 1926 to provide special procedures for conveyances of public lands for solid waste disposal or related purposes. The Act authorizes the Secretary of the Interior to make permanent conveyances, without the standard reverter provision, of public lands when such lands are to be used for the express purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance. This is a departure from the present requirement that the United States retain a reversionary interest in lands conveyed under the Recreation and Public Purposes Act.

EFFECTIVE DATE: 60 legislative days from date of publication.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Paugh (202) 208-4200.

SUPPLEMENTARY INFORMATION: The Act, which became effective on November 10, 1988, terminated authority for the Secretary of the Interior to lease public land for solid waste disposal purposes. It specifically authorizes the Secretary to: (1) Convey public land by patent for new solid waste disposal sites with a limited reverter, (2) convert existing leases into patents without a reverter provision, and (3) remove the reverter provision from existing patents.

Because of Federal liabilities associated with leased sites, it is the policy of the Bureau of Land Management (BLM) to work with local communities to patent public lands for new disposal sites. Existing leased sites would be closed and retained in Federal ownership. If, however, the community expresses an interest in obtaining a patent to an existing site and no new disposal sites are available, the authorized officer may convey the site, but only after all the requirements contained in this final rule have been met and with approval of the Director, BLM. Implementation of this rule will enable State and local governments that are in need of sanitary landfills to acquire sites at low cost. It would also reduce the potential for indiscriminate dumping of solid waste and hazardous substances on public land, and place primary responsibility for oversight and maintenance with the States and the Environmental Protection Agency (EPA)—entities that have the authority, staffs, and necessary expertise to regulate solid waste disposal facilities.

On November 29, 1991, the BLM published a proposed rule in the **Federal Register** (56 FR 61104), with a 30-day comment period. The rule incorporated provisions by which the authorized officer may convey public land for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance. Included in the proposed rule were requirements that pertained to: land use planning, land classification, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), site investigation and State certification, and patent provisions. The proposed rule also made reference to the final EPA regulations that were published in the **Federal Register** (56 FR 50978) on October 9, 1991. These regulations established criteria for municipal solid waste landfills including location restrictions, facility design and operations, groundwater monitoring, corrective action measures, conditions for closure and post-closure use, and requirements for financial responsibility.

In response to the proposed rule published on November 29, 1991, the BLM received comments from 19 sources including: 1 individual, 1 business, 1 industry association, and 16 Governmental entities.

The comments relating directly to the proposed rule and the corresponding responses are discussed as follows. Editorial and grammatical corrections have been made as necessary.

General Comments

Three commenters questioned the BLM policy of retaining leased sites in Federal ownership and asked why the conveyance of existing sites will only be considered if no new disposal sites are available. The BLM has been advised by the Office of the Solicitor, Department of the Interior, that the United States is potentially liable for any problems that may occur at existing sanitary landfills under lease or at leased landfills that would be conveyed out of Federal ownership. Therefore, to minimize Federal liabilities, the BLM would prefer to close and retain the leased sites in Federal ownership and work with local governments in patenting new disposal sites.

One commenter asked if the proposed rule applied to landfills on National Forest lands. The Act and its implementing regulations apply only to public lands administered by the Department of the Interior.

One commenter requested clarification of the terms "hazardous substances" and "household hazardous waste". The BLM did not use the latter term in the proposed rule. The Act specifically authorizes the disposal of solid waste including hazardous substances. The definitions of these terms are found in EPA regulations 40 CFR 261.2 and 302.3, respectively. Household waste, as defined under 40 CFR 261.4, is a component of solid waste and is authorized for disposal under the Act. Neither the Act nor the current regulations specifically authorize the

disposal of permanent or long-term hazardous wastes as defined under 40 CFR 261.3. However, some hazardous wastes such as lawn care and gardening products, discarded paints, and household cleaners are commonly deposited with household wastes or have been deposited from conditionally exempt small quantity generators, as provided for in 40 CFR 261.5. Generally, such wastes would not be found in concentrations sufficient to threaten human health and the environment.

One commenter expressed concern that the proposed rule could apply to oil and gas drilling and production pits. The Recreation and Public Purposes Act only grants authority to the Secretary of the Interior to convey public lands for recreational and public purposes. Qualified applicants under the Act include Federal and State agencies, county and city governments, and nonprofit corporations and associations. The provisions of this rule only pertain to solid waste disposal sites including municipal landfills that would be owned and operated by governmental entities. The provisions of this rule would apply to oil and gas operations only to the extent that exploration and production wastes are disposed at municipal landfills and such wastes qualify as solid wastes or hazardous substances as defined under 40 CFR 261.2 and 302.3, respectively.

Specific Comments

Price

One commenter stated that the provision in § 2741.8(d) that disallows any adjustment in the sale price of public land for inclusion of the limited reverter was confusing and that the existing provisions under § 2741.8 adequately address the pricing requirements. The BLM agrees with the commenter and the provision is removed from the rule.

Site Investigation

One commenter expressed opposition to § 2743.3(a)(3) which requires the lessees to reimburse the Federal Government for the costs of investigating existing sites prior to their transfer out of Federal ownership. Since lessees are the primary beneficiaries of obtaining a patent to existing sites, BLM considers the cost reimbursement provision to be reasonable. In the event that investigative costs place an undue hardship on local governments, the BLM may provide financial assistance.

With regard to the requirement under § 2743.3(a)(3)(iv), one commenter requested clarification as to the standards and responsibility for costs associated with the analysis of soil, water, and air. The commenter also recommended that the regulations be more flexible by allowing local agencies to determine the need for analysis. This provision of the regulations requires that an "appropriate" analysis of soil, water, and air be completed as part of the site investigation. The use of the term "appropriate" is intended to allow the BLM authorized officer flexibility in determining the level and standards of investigation, in consultation with EPA, State and local government officials. The requirements and associated costs for investigating leased disposal sites may vary depending on site-specific factors such as climate, topography, geologic strata, soil types, surface and ground water characteristics, and the type and amount of waste materials deposited at the site.

The same commenter requested clarification as to the applicability of EPA regulations governing solid waste disposal in relationship to this rule and the site investigation requirement specified under § 2743.3(a)(3)(iv). The EPA regulations apply to all new, existing, and lateral expansion of solid waste landfills that receive waste on or after October 9, 1993. This would include existing landfills that are leased or disposal sites that are conveyed under the authority of the Recreation and Public Purposes Act. If the landfill units stop taking waste on or before October 9, 1991, the EPA requirements do not apply. If the units receive waste after October 9, 1991, but stop taking waste before October 9, 1993, the landfills are exempt from all EPA requirements except the final cover requirements specified under 40 CFR 258.60(a) or (b). Small landfill owners or operators that dispose of less than 20 tons of municipal waste per day, based on an annual average, are exempt from EPA design, ground-water monitoring, and corrective action requirements so long as there is no evidence of ground-water contamination from the landfill and the unit serves: (1) A community where surface transportation is interrupted for at least three consecutive months preventing access to a regional waste management facility, or (2) a community that has no practical waste management alternative, and the landfill is located in an area that receives no more than 25 inches of precipitation a year. These exemptions do not apply to this rule. The BLM will require that site investigations be conducted on all existing and new disposal sites prior to the conveyance of public lands out of Federal ownership.

Two commenters recommended that the degree of threat should be specified in § 2743.3 (a)(4), (a)(5), and (b) by revising the language to read " * * * contents of the disposal site do not pose a significant threat to human health and environment." The use of "significant" is subjective and how the term will be applied and interrupted would vary among site investigators and reviewers. Therefore, this suggestion was not adopted.

State Certification

Several comments were received on the provisions in §§ 2743.2(a)(7) and 2743.3(a)(5) of the rule which require State certification of investigative findings. One commenter recommended that conveyances of public land for solid waste disposal proceed without State agency involvement because the certification was unnecessary and cost prohibitive. Because of the concern for public health and in light of the recently promulgated regulations by EPA that direct the States to conduct their own solid waste program in accordance with new Federal guidelines, the certification prior to the transfer of public lands to local governments is reasonable and of benefit to the States and Federal Government in terms of reducing Federal and State liabilities in the event of future contamination disputes.

Another commenter recommended that the BLM should obtain State input in establishing the conditions of the site investigation and that financial assistance be provided in support of State certifications due to increased work outputs. As stated earlier in the preamble, the BLM fully intends to seek State input in determining the standards of investigation and may provide financial assistance to local governments if the costs of investigation pose an undue hardship. However, the rule does not provide for appropriation of Federal funds to support States in their review of investigative findings and certifications thereof.

A third commenter stated that the Federal Government has no authority to require the States to review the investigation reports and produce a certification of any kind, except in cases where the Federal Government conditions the payment of Federal funds to State agencies upon the performance of such tasks. The BLM considers the certification to be a discretionary action on the part of the States. Sections 2743.2(a)(7) and 2743.3(a)(5) of the rule were amended to clarify that it is the applicant's responsibility to obtain the certification.

One commenter stated that § 2745.3(a)(5) implied a concurrent State investigation. There is no intent to have

the State conduct a separate investigation. This provision and the provision under § 2743.2(a)(7) require that State agencies certify that they have reviewed documents submitted as part of the site investigation and concur with the BLM authorized officer as to the assessment concerning hazardous substances.

One commenter suggested that § 2743.3(a)(5) of the rule establish a 60-day time limit for the States to provide certification of investigative findings. The BLM would prefer to establish the review periods on an informal basis because the time necessary to review and certify the investigative reports may vary depending on the amount of technical data, environmental analyses, and support documentation completed for an existing site. Therefore, this suggestion was not adopted.

Patent Provisions

In reference to § 2743.2–1(b) of the rule, one commenter stated that the State should have a hold harmless provision in place. This provision is subject to State law and not appropriate for inclusion into Federal patents.

One commenter stated that the investigation "as of the date of patent" specified in §§ 2743.2–1(c) and 2743.3–1(c) was good in theory but not practical in terms of obtaining a State certification on the same day as the patent is issued. The BLM agrees with this assessment and the provisions are removed from the rule.

Three commenters stated that the 5-year limitation specified in § 2743.2–1(d) was unrealistic because most landfills are designed for a longer period of time due to the high costs of design, environmental evaluations, construction, and permitting. The intent of the Act is to allow local governments to obtain a tract of public land that is of sufficient size to accommodate their landfill needs for periods longer than 5 years. The BLM has tied the 5-year statutory limitation to the plan and schedule of development. Additional guidance on the application of this provision will be provided to the BLM's authorized officers via internal manuals.

Upon publication of this document in the **Federal Register**, the Bureau of Land Management will submit copies of this final rule to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives. Section 4(a) of the Act allows the committees 60 legislative days to review the rulemaking.

The principal authors of this final rule are Mike Ford of the Division of Lands and Realty, BLM Washington Office (WO), and Mike Pool of the Division of Legislation and Regulatory Management (WO), with assistance from the Office of the Solicitor, Department of the Interior.

It has been determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Additionally, this rule will not cause a taking of private property under Executive Order 12630.

List of Subjects in 43 CFR Part 2740

Intergovernmental relations, Public lands—sale, Recreation and recreation areas, Reporting and recordkeeping requirements.

Under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), part 2740, Group 2700, subchapter B, chapter II of title 43 of the Code of Federal Regulations is amended as follows:

Dated: June 5, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

1. The authority citation for part 2740 is revised to read as follows:

Authority: 43 U.S.C. 869 *et seq.*, 43 U.S.C. 1701 *et seq.*, and 31 U.S.C. 9701.

Subpart 2740—Recreation and Public Purposes Act: General

2. Section 2740.0–3 is amended by adding paragraph (c) to read as follows:

§ 2740.0–3 Authority.

* * * * *

(c) Section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act of 1988, authorizes the Secretary of the Interior to convey public lands for the purpose of solid waste disposal or for any other purpose which may result in or include the disposal, placement, or release of any hazardous substance, with special provisions relating to reversion of such lands to the United States.

3. Section 2740.0–5 is amended by adding paragraphs (f) and (g) to read as follows:

§ 2740.0–5 Definitions.

* * * * *

(f) *Hazardous substance* means any substance designated pursuant to Environmental Protection Agency regulations at 40 CFR part 302.

(g) *Solid waste* means any material as defined under Environmental Protection Agency regulations at 40 CFR part 261.

4. Section 2740.0–6(a) is amended by removing the period at the end of the last sentence and adding a comma and phrase to read as follows:

§ 2740.0–6 Policy.

(a) * * * except for conveyances under subpart 2743 of this title.

5. Section 2740.0–7 is amended by adding paragraph (d) to read as follows:

§ 2740.0–7 Cross references.

* * * * *

(d) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance are contained in subpart 2743 of this chapter.

5a. Section 2740.0–9 is added to read as follows:

§ 2740.0–9 Information collection.

The collection of information contained in part 2740 of Group 2700 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0012. This information will be used to determine the suitability of public lands for lease and/or disposal to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. Responses are required to obtain benefits in accordance with the Recreation and Public Purposes Act.

Public reporting burden for this information is estimated to average 47 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (770), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0012), Office of Management and Budget, Washington, DC 20503.

Subpart 2741—Recreation and Public Purposes Act: Requirements

§ 2741.5 [Amended]

6. Section 2741.5 is amended by removing existing paragraph (i) and redesignating paragraph (j) as new paragraph (i).

7. Part 2740 is amended by adding subpart 2743 to read as follows:

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

Sec.
2743.1 Applicable regulations.
2743.2 New disposal sites.
2743.2–1 Patent provisions for new disposal sites.
2743.3 Leased disposal sites.
2743.3–1 Patent provisions for leased disposal sites.
2743.4 Patented disposal sites.

Subpart 2743—Recreation and Public Purposes Act: Solid Waste Disposal

§ 2743.1 Applicable regulations.

Unless the requested action falls within the provision of § 2743.2(b), applications filed or actions taken under this subpart shall be subject to all the requirements set forth in subpart 2741 of this chapter except §§ 2741.6 and 2741.9.

§ 2743.2 New disposal sites.

(a) Public lands may be conveyed for the purpose of solid waste disposal or for any other purpose that the authorized officer determines may include the disposal, placement, or release of any hazardous substance subject to the following provisions:

(1) The applicant shall furnish a copy of the application, plan of development, and any other information concerning the proposed use to all Federal and State agencies with responsibility for enforcement of laws applicable to lands used for the disposal, placement, or release of solid waste or any hazardous substance. The applicant shall include proof of this notification in the application filed with the authorized officer;

(2) The proposed use covered by an application shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(3) Conveyance shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title;

(4) The applicant shall warrant that it will indemnify and hold the United States harmless against any liability that may arise out of any violation of Federal or State law in connection with the use of the lands;

(5) The authorized officer shall investigate the lands covered by an application to determine whether or not any hazardous substance is present. The authorized officer will require full reimbursement from the applicant for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to:

(i) A review of available records related to the history and use of the land;

(ii) A visual inspection of the property; and

(iii) An appropriate analysis of the soil, water and air associated with the area;

(6) The investigation conducted under paragraph (a)(5) of this section must disclose no hazardous substances and there is a reasonable basis to believe that no such substances are present; and

(7) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that no hazardous substances are present on the property.

(b) The authorized officer shall not convey public lands covered by an application if hazardous substances are known to be present.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.2–1 Patent provisions for new disposal sites.

For new disposal sites, each patent will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws;

(c) Except as provided in paragraph (e) of this section, the land conveyed under § 2743.2 of this part shall revert to the United States unless substantially used in accordance with an approved plan and schedule of development on or before the date five years after the date of conveyance;

(d) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon; and

(e) No portion of the land covered by such patent shall under any circumstance revert to the United States if such portion has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

§ 2743.3 Leased disposal sites.

(a) Upon request by or with the concurrence of the lessee, and only with the express approval of the Director, Bureau of Land Management, the authorized officer may issue a patent for those lands covered by a lease, or portion thereof, issued on or before November 9, 1988, that have been or will be used, as specified in the plan of development, for solid waste disposal or for any other purpose that the authorized officer determines may result in or include the disposal, placement, or release of any hazardous substance, subject to the following provisions:

(1) All conveyances shall be consistent with the land use planning provisions contained in part 1600 of this title, and in compliance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371) and any other Federal and State laws and regulations applicable to the disposal of solid wastes and hazardous substances;

(2) Conveyances shall be made only of lands classified for sale pursuant to the procedures and criteria in part 2400 of this title.

(3) The authorized officer shall investigate the lands to be included in the patent to determine whether they are contaminated with hazardous substances. The authorized officer will require full reimbursement from the lessee for the costs of the investigation. The authorized officer may, in his or her discretion, make an exception to the requirement of full reimbursement if the

applicant demonstrates that such costs would result in undue hardship. The investigation shall include but not be limited to the following:

(i) A review of all records and inspection reports on file with the Bureau of Land Management, State, and local agencies relating to the history and use of the lands covered by a lease and any violations and enforcement problems that occurred during the term of the lease;

(ii) Consultation with the lessee and users of the landfill concerning site management and a review of all reports and logs pertaining to the type and amount of solid waste deposited at the landfill;

(iii) A visual inspection of the leased site; and

(iv) An appropriate analysis of the soil, water and air associated with the area;

(4) The investigation conducted under paragraph (a)(3) of this section must establish that the involved lands contain only those quantities and types of hazardous substances consistent with household wastes, or wastes from conditionally exempt small quantity generators (40 CFR 261.5), and there is a reasonable basis to believe that the contents of the leased disposal site do not threaten human health and the environment; and

(5) The applicant shall present certification from the State agency or agencies responsible for environmental protection and enforcement that they have reviewed all records, inspection reports, studies, and other materials produced or considered in the course of the investigation and that based on these documents, such agency or agencies agree with the authorized officer that the contents of the leased disposal site in question do not threaten human health and the environment.

(b) The authorized officer shall not convey lands identified in paragraph (a) of this section if the investigation concludes that the lands contain hazardous substances at concentrations that threaten human health and the environment.

(c) The authorized officer shall retain as permanent records all environmental analyses and appropriate documentation, investigation reports, State certifications, and other materials produced or considered in determining the suitability of public lands for conveyance under this section.

§ 2743.3-1 Patent provisions for leased disposal sites.

Each patent for a leased disposal site will provide that:

(a) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances;

(b) The patentee shall indemnify and hold harmless the United States against any legal liability or future costs that may arise out of any violation of such laws; and

(c) No portion of the land covered by such patent shall under any circumstance revert to the United States.

§ 2743.4 Patented disposal sites.

(a) Upon request by or with the concurrence of the patentee, the authorized officer may renounce the reversionary interests of the United States in land conveyed on or before November 9, 1988, and rescind any portion of any patent or other instrument of conveyance inconsistent with the renunciation upon a determination that such land has been used for solid waste disposal or for any other purpose that the authorized officer determines may result in the disposal, placement, or release of any hazardous substance.

(b) If the patentee elects not to accept the renunciation of the reversionary interests, the provisions contained in §§ 2741.6 and 2741.9 shall continue to apply.

[FR Doc. 92-17309 Filed 7-22-92; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This proposed rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flood and location	#Depth in feet above ground. *Elevation in feet
ILLINOIS	
Huntley (Village), McHenry and Kane Counties (FEMA Docket No. 7006)	
South Branch Kishwaukee River:	
About 950 feet upstream of mouth	*870
About 2200 feet upstream of Chicago and North Western railroad	*879
Maps available for inspection at the Village Administrator's Office, Village Hall, 11704 Coral Street, Huntley, Illinois.	
NEW YORK	
Mamakating (Town), Sullivan County (FEMA Docket No. 7042)	
Basher Kill:	
Approximately 250 feet upstream of confluence of Gumaer Brook	*532
To a point approximately 1,050 feet upstream of the confluence of Gumaer Brook	*533
Gumaer Brook:	
At confluence with Basher Kill	*530
Approximately 125 feet upstream of U.S. 209	*579
Maps available for inspection at the Town Hall, Route 209, Wurtsboro, New York.	
Sackets Harbor (Village), Jefferson County (FEMA Docket No. 7042)	
Mill Creek:	
At confluence with Lake Ontario	*249
Approximately 575 feet upstream of corporate limits	*279
Lake Ontario: Entire shoreline within community	*249
Maps available for inspection at the Village Office, 112 North Broad Street, Sackets Harbor, New York.	
PENNSYLVANIA	
Peters (Township), Franklin County (FEMA Docket No. 7040)	
Johnston Run:	
Approximately 275 feet downstream of T-404 (Edwards Drive)	*517
Approximately 350 feet upstream of Farm Access Road	*572
Maps available for inspection at the Peters Township Building, 5000 Steele Avenue, Lemasters, Pennsylvania.	
VIRGINIA	
Virginia Beach (City), Independent City (FEMA Docket No. 7042)	
Canal No. 2—London Bridge Creek:	
Approximately .8 mile upstream of Shipps Corner Road	*7
Approximately 0.5 mile upstream of Potters Road	*8
Canal No. 2—West Neck Creek:	
Approximately 0.5 mile upstream of Indian River Road	*5
Approximately 1.7 miles upstream of confluence of Colony Acres canal	*7
Holland Road Corridor System:	
At confluence with Green Run Canal	*8
Approximately 200 feet upstream of Rosemont Road	*8
Green Run Canal:	
At confluence with Canal No. 2—London Bridge Creek	*8
At downstream side of Lynnhaven Parkway	*9
Colony Acres Canal:	
At confluence with Canal No. 2—West Neck Creek	*7
Approximately 1,250 feet upstream of confluence with Canal No. 2—West Neck Creek	*7
Maps available for inspection at the Virginia Beach City Hall, Department of Public Works, City Engineering Office, Municipal Center, Virginia Beach, Virginia.	
WEST VIRGINIA	
Charles Town (City), Jefferson County (FEMA Docket No. 7042)	
Evitts Run:	
Approximately .85 mile downstream of U.S. Route 340	*468
Approximately 650 feet upstream of upstream corporate limits	*495
Maps available for inspection at the Charles Town City Hall, 218 East Congress Street, Charles Town, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 15, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-17397 Filed 7-22-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[FCC 92-310]

Space Station Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the amateur service rules to specify that any amateur station may be a space station. A space station is an amateur station that is located more than 50 km above the Earth's surface and that transmits on frequencies allocated to the amateur-satellite service. These amendments are necessary so that the public will have a more highly-trained pool of operators and electronic experts available in emergencies. It is also necessary so that the Commission will not have to issue waivers to astronauts who want to operate their amateur stations in space, but who are not eligible currently because they do not hold the required class of operator license. The effect of this rule amendment is to provide an additional privilege for most amateur operators.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of the Amateur Radio Services Rules (Part 97) Concerning Space Station Operation.

[RM-7934 and RM-7957]

Order

Adopted: July 1, 1992.

Released: July 17, 1992.

By the Commission:

1. In this *Order*, we are amending the amateur radio services rules to authorize any amateur operator to be the licensee of a space station.[1] Section 97.207(a) of the Commission's Rules, 47 CFR 97.207(a), currently provides that only an Amateur Extra Class operator may be the licensee of a space station. Amateur Extra is the highest grade of the five classes of amateur operator license.[2]

[1] A space station is an amateur station located more than 50 km above the Earth's surface that transmits on frequencies allocated to the amateur-satellite service.

[2] The other classes of amateur operator licenses are: Novice, Technician, General, and Advanced. As

Continued

2. On March 3, 1992, Neal A. Osborn filed rule making petition RM–7957. He requests that any amateur station be permitted to transmit from space. He also requests that "spacecraft" be included within the definition of "ship" in order to subject them to the restrictions pertaining to amateur stations aboard ships contained in § 97.11 of the Commission's Rules, 47 CFR 97.11. On March 5, 1992, Jim D. Haynie filed petition for rule making RM–7934. He also requests that any amateur station be permitted to transmit from space. Both petitioners note that waivers of Section 97.207(a) have been granted where astronauts holding lower classes of operator license sought permission for their amateur stations to be space stations.

3. We believe that amending the rules to permit any amateur station to transmit from space would benefit both the amateur community and the public. Amateur operators would have greater access to space telecommunications technology. The public would have a more highly-trained pool of operators and electronics experts available in emergencies. Additionally, the Commission would benefit because rule waivers to astronauts who want to operate their amateur stations in space would not have to be issued. We do not agree, however, that a spacecraft should be defined as a "ship." Our rules will continue to follow the definition of space station which is contained in the international Radio Regulations.[3] Further, we note that the volunteer-examiner coordinators (VECs) can rearrange in their pools the necessary questions concerning proper operation of a space station.[4]

4. This rule amendment would provide an additional privilege for most amateur operators. It is expected to be non-controversial and is considered to be a minor rule amendment in which the public is not particularly interested. We find, therefore, for good cause, that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. See 5 U.S.C. § 553(b)(B).

5. Accordingly, *it is ordered that* effective September 23, 1992, Part 97 of the Commission's Rules, 47 CFR part 97, *is amended* as set forth below. Authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

6. Pursuant to the authority contained in 47 U.S.C. 154(i), *it is further ordered* That the petitions for rule making of Neal A. Osborn and Jim D. Haynie *are granted* as indicated herein and *are denied* in all other respects.

7. For information concerning this Order contact Maurice J. DePont, Private Radio Bureau, (202) 632–4964.

List of Subjects in 47 CFR Part 97

Radio, Space station.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Change

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.207(a) is revised to read as follows:

§ 97.207 Space Station.

(a) Any amateur station may be a space station. A holder of any class operator license may be the control operator of a space station, subject to the privileges of the class of operator license held by the control operator.

* * * * *

[FR Doc. 92–17316 Filed 7–22–92; 8:45 am]

BILLING CODE 6712–01–M

of March 31, 1992, there were 555,989 amateur operators licensed by the Commission, including 58,543 who held the Amateur Extra Class operator license.

[3] See Radio Regulation No. 61, Geneva (1979). See also § 97.3(a)(36) of the Commission's Rules, 47 CFR § 97.3(a)(36).

[4] The VECs maintain the question pools for the amateur operator license examinations. Section 97.503(b) of the Commission's Rules, 47 CFR 97.503(b), requires that each written examination be structured so as to prove that an examinee possesses the operational and technical qualifications required to perform properly the duties of the class of operator license sought. The questions concerning space stations include frequencies authorized, types of transmissions, telecommand provisions, and notifications.

DEPARTMENT OF DEFENSE

48 CFR Parts 223 and 252

Defense Federal Acquisition; Regulation Supplement; Drug-Free Work Force

AGENCY: Department of Defense (DOD).

ACTION: Interim final rule.

SUMMARY: The Department of Defense is removing the drug-free work force final rule and reinstating the interim rule that was published as subpart 223.5. of the Defense Federal Acquisition Regulation Supplement on July 31, 1991 (56 FR 36280).

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda W. Neilson, Procurement Analyst, DAR Council, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The interim rule was originally published in the **Federal Register** on September 28, 1988 (53 FR 37763). Sixty-three comments were received from thirty-five respondents to the rule. After review of the public comments, and internal coordination, the rule was finalized on November 27, 1991 (56 FR 60066). Since the final rule was a significant departure from the interim rule, a question was raised as to whether the public was given adequate opportunity to express and have its views considered in the development of the final rule. Consequently, the decisions has been made to remove the final rule, reinstate the interim rule, and to publish the removed final rule as a proposed rule with a request for comments. The notice of proposed rule with request for comments is published elsewhere in this **Federal Register** edition. The removal of the final rule and reinstatement of the interim were effective July 16, 1992, upon issuance of Departmental Letter 92–006.

B. Regulatory Flexibility Act

When the interim rule was originally published on September 28, 1988 (53 FR 37663), the rule was not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, thus we did not perform an initial regulatory flexibility analysis at that time. However, our current assessment is that the interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule requires contractors to institute and maintain a program for achieving the objective of a drug-free work force. An initial regulatory flexibility analysis has been prepared and is summarized as follows.

The interim rule applies to all businesses, large and small, with DoD contracts that require contractor employees to have access to classified information, or to be in positions which the contractor determines involve national security, health or safety, or

which require a high degree of trust and confidence. In addition, the clause may be inserted in contracts in which the requirement is determined by the contracting officer to be necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract. The requirement does not apply to contracts for commercial or commercial-type products, or for contracts which require performance or partial performance outside the U.S., its territories, and possessions, unless the contracting officer determines inclusion of the requirement to be in the best interest of the Government. A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from Mrs. Linda W. Neilson, Defense Acquisition Regulations System, 3062 Defense Pentagon, Washington, DC 20301-3062. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR case 88-083 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 223 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 223 and 252, continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 223.5, consisting of sections 223.570 through 223.570-3, is revised to read as follows:

SUBPART 223.5—DRUG-FREE WORKPLACE

223.570 Drug-free work force.

223.570-1 Definitions.

"Employee in a sensitive position" and "illegal drugs," as used in this section, are defined in the clause at 252.223-7004, Drug-Free Work Force.

223.570-2 Policy.

DoD policy is to ensure that its contractors maintain a program for achieving a drug-free work force.

223.570-3 General.

(a) The use of illegal drugs is inconsistent with the law-abiding behavior expected of all citizens. Employees who use illegal drugs tend to be less productive, less reliable, and prone to greater absenteeism. The use of illegal drugs by contractor employees results in the potential for increased cost, delay, and risk in the performance of a Government contract.

(b) If a contractor's employees use illegal drugs at any time, it can—

(1) Impair their ability to perform tasks that are critical to proper contract performance;

(2) Increase the potential for accidents and for failures that can pose a serious threat to the national security, health, and safety;

(3) Cause less than the complete reliability, stability, and good judgment required of an individual who has access to sensitive information;

(4) Create the possibility of coercion, influence, and irresponsible action under pressure that may post a serious risk to national security, health, and safety.

223.570-4 Contract clause.

(a) Use the clause at 252.223-7004, Drug-Free Work Force, in all solicitations and contracts—

(1) That involve access to classified information; or

(2) When the contracting officer determines that the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of, or performance of, the contract.

(b) Do not use the clause in solicitations and contracts for—

(1) Commercial or commercial-type products (see FAR 11.001); or

(2) Performance or partial performance outside the United States, its territories, and possessions, unless the contracting officer determines such inclusion to be in the best interest of the Government.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.223-7004 is revised to read as follows:

252.223-7004 Drug-Free Work Force.

As prescribed in 223.570-4, use the following clause:

Drug-Free Work Force (SEP 1988)

(a) *Definitions.* (1) *Employee in a sensitive position,* as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) *Illegal drugs,* as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[FR Doc. 92-17314 Filed 7-22-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-12; Notice 2]

RIN 2127-AD98

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Motor Vehicle Safety Standard No. 108 to permit "Combination Headlighting Systems," headlighting systems in which the upper and lower beams can be provided by two types of dissimilar headlamps, or by combining aspects of performance of the two types within a single headlamp. A vehicle manufacturer may select upper and lower beam providers from three types of dissimilar headlighting systems: Type F sealed beam, integral beam, and replaceable bulb, provided that the individual headlamps are designed to conform to the photometrics of Figures 15 or 17 of Standard No. 108. The rule will further promote implementation of high intensity discharge headlighting technology in the relatively near future, which currently may be implemented only as an integral beam system.

DATE: The effective date of the rule is August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, presently allows motor vehicles to be equipped with one of three types of headlighting systems. These are sealed beam systems as specified by S7.3 (Types A through H), integral beam systems as specified by S7.4, and replaceable bulb systems as specified by S7.5.

In response to recent requests for interpretation from two headlamp manufacturers, Koito Manufacturing Co. (Koito), and Hella KG Hueck (Hella), and a lighting engineer, Gordon Bonvallet, NHTSA advised that Standard No. 108 required that both the upper and lower headlamp beams for a vehicle be provided by the same headlighting system. Foreseeing such an interpretation, Koito asked that its letter be treated as a petition for rulemaking to allow intermixing of headlighting systems, so that the upper beam and lower beam could be provided by headlamps from different headlighting systems. After Hella received its interpretation, it petitioned for similar rulemaking. Koito, Hella, and Mr. Bonvallet inquired with respect to specific headlighting system designs. In the Koito system, the lower beam would be provided by a replaceable bulb headlamp and the upper beam by an integral beam lamp, either as separate headlamps, or combined as a single headlamp. In the Hella and Bonvallet systems, the lower beam would be provided by an integral beam headlamp, and the upper beam by a replaceable bulb headlamp combined as a single headlamp. NHTSA granted these petitions, and implemented the grants through a notice of proposed rulemaking published on September 19, 1991 (56 FR 47436).

As NHTSA stated in that notice, it has been the agency's goal for a number of years to reduce regulatory restrictions inhibiting design freedom in motor vehicle lighting if those restrictions are not necessary for safety. After reviewing its specifications for headlamps and the comments received in response to the NPRM, NHTSA has determined that some intermixing of headlamp systems may be allowed without apparent effect upon safety, and that such may be accomplished by relatively simple amendments to Standard No. 108.

By way of review, the headlamps and associated photometrics initially specified by Standard No. 108 were those of the Society of Automotive Engineers (SAE), specifically, headlamps of sealed beam design and photometrics of SAE Standard J579. These specifications do not provide for use of the lower beam during upper beam use. During the 1980's, headlamp manufacturers developed systems in which the lower beam can be used to supplement the upper beam should vehicle manufacturers desire the performance afforded by such usage. NHTSA amended Standard No. 108 to allow headlamps of new design, and adopted modified photometric specifications (Figure 15 for four-lamp systems, Figure 17 for two-lamp systems). This allows the lower beam lamp to remain illuminated when the upper beam lamp is energized in four-lamp systems. For two-lamp systems using Figure 17 photometrics, Standard No. 108 permits a manufacturer to design each lamp using one or two light sources to produce the lower beam, the upper beam, or both beams; this means that the designer may choose to use the outboard light sources for meeting the lower beam requirements and both light sources for meeting the upper beam requirements, thus achieving the same look or performance as in four-lamp systems. Thus, in the past 10 years Standard No. 108 has been amended to allow Types E through H sealed beam headlamps, replaceable bulb headlamps (with Type HB1 through HB5 light sources), and integral beam systems. Type F sealed beam headlamps must meet the photometrics of Figure 15. Replaceable bulb headlamps with Type HB2, HB3, and HB4 light sources must meet the photometrics of Figures 15/17. Integral beam headlamps may meet the photometry requirements of either Figures 15/17 or SAE J579 DEC84. Headlamps with only HB1 or HB5 light sources, and all sealed beam headlamps other than Type F must meet the photometry requirements of SAE J579 DEC84. Headlamps with HB1 and HB5 light sources used in combination with any light source other than HB1 or HB5 must meet the photometry of Figures 15/17.

The agency directed its proposal to those headlighting systems designed to conform with Figures 15/17 for two reasons. First, the Koito and Bonvallet systems would incorporate headlamps

designed to conform to the photometrics of Figures 15/17. Second, NHTSA is unaware of any desire to mix headlamp systems designed to conform to SAE J579 DEC84 (and has a reservation concerning such mixing, discussed below). For some years, gaseous, or high intensity discharge (HID) light sources for headlamps have been under development, and NHTSA is aware of the desire of some manufacturers to introduce this technology on production vehicles. It is probable that the initial application of HIDs, as in the Bonvallet design, will be as integral beam headlamps designed to meet lower beam photometry. Unlike other headlamp light sources, all of which provide essentially full intensity of illumination within one second after activation, the HID, at its present state of development, requires one to three seconds or more to reach its full photometric potential. From the driver's standpoint, this time lag is acceptable upon initial activation of an HID headlamp, but is not acceptable during a beam change from upper to lower, where a one to three second black-out can occur during which the level of illumination slowly arises from zero to near full intensity. Once a contemporary lower beam HID headlamp is activated, it is likely that it will remain activated even when the upper beam is selected. Thus today's use of HID light sources is largely limited to a system allowing the use of a lower beam light source during upper beam operation since the lower (HID) beam needs to remain on to prevent blackout. A lower beam HID headlamp is not acceptable in a system designed to the photometrics of SAE J579 DEC84, under which the lower beam light source must be extinguished when the upper beam is activated. Similarly, with the present state of HID development, an upper beam HID headlamp would be unacceptable with such a temporary blackout when switching from lower to upper beam. Thus, manufacturers designing such systems rely on Figure 15/17 photometry for achieving viable headlighting systems using HID light sources.

Additionally, under the proposal, the lamps emitting lower beams must be of the same type and provide a symmetrical effective projected luminous lens area when illuminated. This allows body designers the freedom to choose an asymmetrical front lighting design, but ensures that existing visual cues are retained when the headlamps are in operation that identify the vehicle to approaching traffic as a passenger car multipurpose passenger vehicle, truck, or bus, rather than as a motorcycle.

Therefore, NHTSA proposed that Standard No. 198 be amended to allow a new category of headlighting system, to be known as a "Combination Headlighting System". Each lamp of a four-lamp combination system would be designed to conform to the photometrics of Figure 15. The lower beam could be provided by a Type LF sealed beam, a replaceable bulb, or an integral beam headlamp. The upper beam headlamp could be either a replaceable bulb, Type UF sealed beam, or an integral beam headlamp as long as it was not the same type as the lower beam headlamp.

Each headlamp in a two-lamp system would incorporate two distinct sources of illumination, similar to current replaceable bulb headlamps in two lamp systems that often incorporate two light sources, each with a single filament. However, the two sources of illumination would themselves be dissimilar types. In a two-lamp combination system, the lower beams could be provided by either an integral beam headlamp that shares the headlamp housing with a headlamp other than an integral beam type, or a replaceable bulb headlamp that shares the headlamp housing with a headlamp other than a replaceable bulb type. The upper beam in a two-lamp system would be provided by a replaceable bulb headlamp or an integral beam headlamp, also sharing the same headlamp housing. Each beam in such a headlamp system would be designed to conform to the photometrics of Figure 17. Headlamps thus composed would be, in part, a replaceable bulb headlamp subject to the requirements for that type and, in part, an integral beam headlamp, subject to the requirements for that type.

Comments on the proposal were submitted by Advocates for Highway and Auto Safety ("Advocates"), BMW of North America, Chrysler Corporation, Ford Motor Company, General Motors Corporation ("GM"), GTE Sylvania, Mercedes-Benz of North America, and Volkswagen of America. All commenters supported the proposal. In addition, Ford, GM, and Advocates had specific comments which the agency wishes to address.

Ford recommended that any HID headlamp used to provide a lower beam should remain continuously activated so as to prevent a temporary "black out" when switching from the upper to the lower beam. It claimed that neither the existing standard nor the proposal appear to specify such a requirement. Ford is correct, but NHTSA does not believe that such a requirement is needed. The realities of the market place will encourage manufacturers to develop systems that do not "black out". These realities include the price of liability insurance, and acceptance by consumers. At the present state of development, HID's are likely to have a short delay before operating. To address the blackout problem, vehicle manufacturers may choose to leave the lower beam light source(s) illuminated during upper beam use (Figure 15), or to provide an upper beam by using two light sources, one of which is a lower beam light source (Figure 17). Standard No. 108 permits manufacturers to implement such designs through using the photometry of Figure 15 or Figure 17.

GM stated that it appeared that beam contributors, part of an integral beam system, had been omitted inadvertently from proposed S7.6. Although NHTSA believes that S7.6, as proposed, allows beam contributors, this was not evident to GM. Therefore, to clarify the matter, S7.6.2.1 and S7.6.3 as adopted include specific references to beam contributors.

GM also argued that a definition of "Combination Headlighting System" should be adopted. It suggested "A headlighting system in which upper and lower beams are provided by two types of dissimilar headlamps." In NHTSA's view, this implies that any type of headlamp could be part of a combination headlighting system (*e.g.*, a Type A and Type F sealed beam headlamp). Because S7.6 is explicit in the types of headlamps that may be combined, NHTSA has concluded that a definition is not required. In another comment, GM suggested revision of the proposal to state that a combination headlighting system consists of two parts: an integral beam type headlamp and a replaceable bulb type. The agency did not adopt this suggestion because it would not permit use of Type F sealed beam lamps in a combination system, even though Type Fs are photometrically compatible. GM also believes that the definition of "Integral Beam Headlamp" should be amended to add the qualifier that it is not a "Combination Headlighting System." This amendment is unnecessary; a "headlamp" is not a "headlighting system," but a part of such a system.

Finally, GM suggested that the standard specifically state that lower and upper beam headlamps may be used simultaneously in combination headlighting systems when the upper beam is activated. S5.5.8 already contains the requested language with respect to integral beam systems and headlighting systems that are designed to conform to Figure 15. NHTSA

believes that permissibility for simultaneous use is also implicit in the requirements of Figure 17 that allow use of a lower beam light source to contribute to upper beam photometrics, but is adding language to S5.5.8 to clarify the point.

Advocates supported the proposal, but expressed concern that the frequency of NHTSA rulemaking proposals on front lighting has resulted in a failure of coordination to assure that the actions are mutually consistent "and also appropriately address the photometric needs of the current photometric driving environment." Although these comments were directed in the main towards other rulemaking actions, Advocates recommended that NHTSA refrain from issuing a final rule on combination headlighting systems until it had made a decision on the merits of the alternate choices proposed in Docket No. 85–15; Notice 10 for illumination above the horizontal. NHTSA sees no reason to do so. The current rulemaking pertains to the use of headlamps designed to conform to Figure 15/17 photometrics; the rulemaking action cited pertains to the performance of those headlamps. The amendment adopted with this notice simply allows a different way of using headlamps designed in conformance with current requirements, and is in no way inconsistent with the proposal still pending. If one of the photometric alternates is adopted, all headlamps designed to conform to Figure 15/17 photometrics will be required to meet them, including those used in combination headlighting systems.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in courts.

Effective Date

Because the amendment relieves a design restriction, and imposes no additional burden upon any regulated party, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance is in the public interest. The amendment is effective 30 days after its publication in the **Federal Register**.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. It will provide an alternate means of compliance with existing requirements. Accordingly, a Regulatory Evaluation has not been prepared.

Regulatory Flexibility Act

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Headlamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the rule will not require vehicles to be equipped with mixed types of headlighting systems. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule would not have a significant effect upon the environment. It does not require any change in the manufacture of headlamps. The rule would not have an effect upon fuel consumption.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Paragraph S5.5.8 is amended by adding a new sentence at the end thereof to read:

"S5.5.8 * * * On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17."

3. Paragraphs S7.7, S7.7.1, S7.7.2, S7.7.2.1, S7.7.2.2, S7.7.3, S7.7.4, S7.7.5, S7.7.5.1, and S7.7.5.2 are redesignated respectively S7.8, S7.8.1, S7.8.2, S7.8.2.1, S7.8.2.2, S7.8.3, S7.8.4, S7.8.5, S7.8.5.1, and S7.8.5.2.

4. Paragraph S7.6 is redesignated S7.7.

5. In redesignated paragraph S7.8.2.1(b), the reference to "S7.7.5.2(b)(3)" is changed to "S7.8.5.2(b)(3)."

6. In redesignated paragraph S7.8.2.2, the reference to "S7.7.3 and S7.7.4" is changed to "S7.8.3 and S7.8.4."

7. In redesignated paragraph S7.8.5.1(a), the reference to "S7.7.5.1(d)(1)" is changed to "S7.8.5.1(d)(1)."

8. In redesignated paragraph S7.8.5.1(c), the reference to "S7.7 is changed to "S7.8."

9. In redesignated paragraph S7.8.5.2(b)(3), the reference to "S7.7.2.1" is changed to "S7.8.2.1."

10. In redesignated paragraph S7.8.5.2(c)(3)(ii)(D), the reference to "S7.7.5.1(c)" is changed to "S7.8.5.1(c)."

11. In redesignated paragraph S7.8.5.2(c)(3)(ii)(E), the reference to "S7.7.5.2(c)(1) and (2)" is changed to "S7.8.5.2(c)(1) and (2)."

12. In paragraph S7.4(a)(3), the reference to "S7.7.5.2" is changed to read "S7.8.5.2."

13. In paragraphs S7.4(e), S7.5(d)(1), and S7.5(e)(1), the reference to "S7.7.5.1" is changed to "S7.8.5.1."

14. In paragraphs S7.4(f) and S7.5(c), the reference to "S7.7.1" is changed to "S7.8.1."

15. In paragraphs S7.4(g) and S7.5(h), the reference to "S7.7" is changed to "S7.8."

16. Paragraph S7.1 is revised to read:

"S7.1 Each passenger car, multipurpose passenger vehicle, truck, and bus shall be equipped with a headlighting system designed to conform to the requirements of S7.3, S7.4, S7.5, or S7.6."

17. New Paragraph S7.6 is added to read:

"S7.6 *Combination Headlighting System.* A combination headlighting system shall be comprised of either two headlamps designed to conform to the requirements of S7.6.2, or any combination of four headlamps designed to conform to the requirements of S7.3.7, S7.4, or S7.5 of this standard.

S7.6.1 A combination headlighting system shall provide in total not more than two upper beams and two lower beams. When installed on a motor vehicle, the headlamps (or parts thereof) that provide the lower beam shall be of the same type, and provide a symmetrical effective projected luminous lens area when illuminated.

S7.6.2 In a combination headlighting system consisting of two headlamps, each headlamps shall be designed to conform to Figure 17, and shall be a combination of two different headlamps chosen from the following types: a Type F headlamp, an integral beam headlamp, and a replaceable bulb headlamp.

S7.6.2.1 That part of the headlamp which contains an integral beam headlamp, or beam contributors used in place of a single headlamp, shall be designed to conform to the requirements of S7.4 (c) through (i) of this standard.

S7.6.2.2 That part of the headlamp which contains a replaceable bulb headlamp shall be designed to conform to the requirements of S7.5 of this standard.

S7.6.3 In a combination headlighting system consisting of four headlamps, each headlamp shall be designed to conform to Figure 15, or if an integral beam headlamp in which there is more than one beam contributor, designed to conform to Figure 15 in the manner required by S7.4(a)(3) of this standard.

Issued on: July 17, 1992.

Frederick H. Grubbe,

Deputy Administrator.

[FR Doc. 92-17328 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Horse Mountain to Point Arena, California, at midnight, July 16, 1992, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 3,400 chinook salmon for the subarea will be reached by midnight, July 16, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: Effective at 2400 hours local time, July 16, 1992, through 2400 hours local time, August 31, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 6, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140, or Rodney R. McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and preseason notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from Horse Mountain to Point Arena, California, would have three seasons: The nearest Saturday to February 15 through the earlier of May 31 or attainment of the subarea chinook quota, June 30 through the earlier of August 31 or attainment of the subarea chinook quota, and September 1 through the nearest Sunday to November 15. The recreational fishery in this subarea is limited through August 31 by an impact quota of 3,400 chinook salmon.

Based on the best available information on July 14, the recreational fishery in the subarea from Horse Mountain to Point Arena, California, is projected to reach the subarea impact quota of 3,400 chinook salmon by midnight, July 16, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species. The fishery in this subarea will reopen as announced in the emergency interim rule and notice of 1992 fishery management measures (57 FR 19388, May 6, 1992) at 0001 hours local time, September 1, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, July 16, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the California Department of Fish and Game regarding the closure of the recreational fishery between Horse Mountain and Point Arena, California. The State of California will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 6, 1992.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-17402 Filed 7-22-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[Docket No. PRM-61-2]

New England Coalition on Nuclear Pollution, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated April 25, 1992, which was filed with the Commission by New England Coalition on Nuclear Pollution, Inc. The petition was docketed by the NRC on May 4, 1992, and has been assigned Docket No. PRM-61-2. The petitioner requests that the NRC amend its regulations regarding waste classification of low-level radioactive waste to restrict the number and types of waste streams which can be disposed of in near-surface disposal facilities. The petitioner also requests that the NRC prepare a supplemental Environmental Impact Statement (EIS) to the original EIS prepared for 10 CFR part 61 (December 27, 1982; 47 FR 57446).

DATES: Submit comments by September 21, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

For a copy of the petition, write the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7758 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has established specific requirements for licensing the land disposal of radioactive waste in 10 CFR part 61. These regulations specify the technical requirements that must be met for the near-surface disposal of waste. The technical requirements for waste classification are contained in 10 CFR 61.55.

Classification of waste for near-surface disposal is determined by the concentration of long-lived radionuclides whose potential hazard will continue long after precautions such as institutional controls, improved waste form, and deeper disposal are no longer effective and the concentration of short-lived radionuclides for which these precautions are effective. The three major classifications of waste for near-surface disposal are described as follows:

(1) Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of Class A waste must meet the minimum requirements set forth in § 61.56(a). If Class A waste also meets the stability requirements set forth in § 61.56(b), it is not necessary to segregate the waste for disposal.

(2) Class B waste is waste that must meet more rigorous requirements on waste form to ensure stability after disposal. The physical form and characteristics of Class B waste must meet both the minimum and stability requirements set forth in § 61.56.

(3) Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and characteristics of Class C waste must meet both the minimum and stability requirement set forth in § 61.56.

Petitioner

The New England Coalition on Nuclear Pollution, Inc., is a non-profit, tax-exempt organization which was incorporated in April 1971. The organization is based in Brattleboro, Vermont, and has members throughout the country. The Coalition has members in the following states hosting, or considering hosting, a low-level radioactive waste disposal facility: California, Connecticut, Illinois, Massachusetts, Maine, North Carolina, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Texas, and Vermont.

Reasons for the Petition

The petitioner believes that the waste classified for near-surface disposal, which the petitioner terms "low-level" waste, comprises both long-lived and short-lived material. The petitioner believes that this combination of material would make facility engineering extremely difficult, if not impossible. The petitioner stated that recent studies by Rogers & Associates for the Vermont Low-Level Radioactive Waste Authority have shown that, in the state of Vermont, 6 already-separate waste streams account for more than 99% of all of the long-lived activity in the "low-level" waste stream, but only about 12% of the total waste volume. The petitioner believes that these studies also showed that, under modeling scenarios different from those used by NRC, these waste streams would cause an earth mounded concrete vault facility to fail. The petitioner believes that the results would not be any different for any near-surface facility design. The studies also showed that of the 6 waste streams, 3 are Class A, 2 Class B, and only 1 Class C. The petitioner believes that the problematic waste streams do not directly correspond to the current NRC waste classification system, though most of the activity is found in the Class C waste stream. The petitioner believes that siting these long-lived materials in near-surface facilities, such as those planned in most areas of the country, is unwise.

The Petition

The petitioner requests that the NRC revise its regulations concerning the classification of waste for near-surface disposal to restrict the number and type of waste streams which may be disposed of in near-surface disposal facilities. The petitioner believes the requested changes are necessary because of significant new information concerning inadvertent intrusion into low-level radioactive disposal facilities that was not available at the time the original environmental impact statement for 10 CFR Part 61 was developed. The petitioner also believes that the NRC must develop a supplemental environmental impact statement (EIS) concerning the land disposal of radioactive waste because, according to the petitioner, the premises leading to the conclusions reached in the original EIS have substantively changed.

The petitioner is basing this petition on what the petitioner believes are three critical changes in the reasoning which resulted in the current regulations.

1. The original EIS was based on a 500 mrem/year dose to "inadvertent intruders," derived from the then current guidance from ICRP, NCRP, EPA and NRC. The petitioner cites present guidance that would limit the dose to inadvertent intruders to a level of 100 mrem (See § 20.1301, 56 FR 23375; May 21, 1991), rather than 500 mrem per year. The waste classification system NRC adopted was dependent on the level of intruder doses allowed at that time. The EIS analysis showed that setting the dose limits lower than 500 mrem would result in about 10% of the waste stream being declared unacceptable for disposal in the base case shallow-land burial facility. Therefore, the petitioner believes it is clear that lowering the dose limit would impact the final waste classification analysis.

2. The petitioner states that the NRC considered three intrusion events based on evaluation of the broad range of events possible, those considered by other investigators, and the likelihood of occurrence. According to the petitioner, the final EIS notes that NRC did not directly consider the probability of various intrusion events occurring except to the extent of considering reasonable, probable productive uses for which the land could be used. The petitioner believes that this was a matter of regulatory discretion rather than of scientific data. The original analysis was also based on the assumption that all intrusion would be inadvertent. However, the petitioner believes that this assumption is not valid because, according to the petitioner, there are many credible scenarios that would involve deliberate intrusion. The petitioner states that recent studies in Vermont show that, when intrusion is deliberate, the ability of near-surface facilities to contain all of the currently classified low-level radioactive waste stream is questioned. The petitioner requests that the NRC reconsider its decisions concerning possible intrusion scenarios.

3. The petitioner believes that the cost differential between the shallow-land burial facility and the geologic facilities needed to dispose of waste unacceptable for near-surface disposal was exaggerated and should be revised. At the time of the original EIS, it was assumed that low-level radioactive waste would be disposed of in shallow-land burial facilities on an "eastern humid site," based on the "shallow-land burial" disposal design. Shallow-land burial was assumed to be substantially cheaper than alternative facility designs, and cost considerations were a factor in determining which wastes should be disposed of at facilities licensed under 10 CFR part 61. However, according to the petitioner, none of the states or compacts east of the Mississippi is contemplating use of the shallow-land burial design. All of these states and compacts intend to use some form of facility engineering that would increase the cost of low-level waste disposal.

The petitioner believes that the supplement to the EIS would result in a small component of the waste currently considered acceptable for near-surface disposal being declared unacceptable. By removing additional waste streams than those originally eliminated by NRC, the petitioner believes that two major difficulties can be addressed without benefit of substantial but baseless speculation. Potential intruder doses could be held well within regulatory limits, while mistakes in scenario prognostication would not result in harm to intruders or to the public.

The petitioner believes that the reclassification of the waste by NRC would enable the NRC to specify the materials that are truly "low-level," and ensure that safety enhancements are required for that small portion of the "low-level" waste stream that cannot safely be disposed in near-surface facilities.

Dated at Rockville, Maryland, this 16th day of July 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-17262 Filed 7-22-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-18-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This proposal would require modification of the main deck cargo door lock, viewing windows, and warning indication system. This proposal is prompted by a report that a cargo door opened in-flight, resulting in an explosive decompression of the airplane. The actions specified by the proposed AD are intended to prevent a cargo door from opening in flight, resulting in rapid decompression of the airplane.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-18-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and

be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–18–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

In February 1989, a cargo door on a Boeing Model 747 series airplane opened in flight, resulting in an explosive decompression of the airplane. Investigation of that accident has revealed that the designs of the latching and locking assemblies and the warning systems of the cargo door were factors contributing to the opening of the door during flight.

In June 1989, the Air Transport Association (ATA) of America sponsored a conference to focus on continued structural airworthiness of non-plug type cargo doors. A Cargo Door Task Force was established, including representatives from the operators, the manufacturers, and the FAA. One objective of the Task Force was to select service bulletins to be recommended for mandatory accomplishment in order to eliminate design features that may contribute to unsafe conditions. One of the service bulletins recommended for mandatory action was Boeing Service Bulletin 737–52–1060, dated June 11, 1976, which describes a modification of the main deck cargo door of Model 737 series airplanes in the cargo configuration. The intent of this modification is to improve the main deck cargo door lock, viewing windows, and warning indication system. Such modifications are integral in preventing the unsafe condition presented by a cargo door opening in flight, which could result in rapid decompression of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 737–52–1060, dated June 11, 1976, that describes procedures for modification and test of the main deck cargo door lock, viewing windows, and warning indication system, to include relocating the warning light control from the cam latch torque tube to the lock pins, enlarging and illuminating certain latch viewing windows, and increasing the engagement of the lock pins.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification and test of the main deck cargo door lock, viewing windows, and warning indication system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 57 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 52 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $519 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,758. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92–NM–18–AD.

Applicability: Model 737 series airplanes; as listed in Boeing Service Bulletin 737–52–1060, dated June 11, 1976; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent a cargo door from opening in flight, resulting in rapid decompression of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify and test the main deck cargo door lock, viewing windows, and warning indication system, in accordance with Section III of Boeing Service Bulletin 737–52–1060, dated June 11, 1976.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 29, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17428 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-277-AD]

Airworthiness Directives; British Aerospace Viscount Model 744, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, that would have required initial and repeated inspections to detect corrosion of the rear pressure bulkhead, using both visual and non-destructive test methods, and, if necessary, repair of damaged parts. That proposal was prompted by reports of corrosion found on the rear pressure bulkhead. This action revises the proposed rule by reducing the compliance time for one repetitive inspection, and changing visual inspections to non-destructive test inspections. The actions specified by this proposed AD are intended to prevent structural failure of the bulkhead and associated decompression of the passenger cabin.

DATES: Comments must be received by September 8, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-277-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-277-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Viscount Model 744, 745D, and 810 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 12, 1992 (57 FR 5099). That NPRM would have required initial and repeated inspections of the rear pressure bulkhead, using both visual and non-destructive test methods, and, if necessary, repair of damaged parts. That NPRM was prompted by reports of corrosion found on the rear pressure bulkhead. That condition, if not corrected, could result in structural failure of the bulkhead and associated decompression of the passenger cabin.

Since the issuance of that NPRM, British Aerospace has issued Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); and PTL 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes). Both revised service bulletins have been significantly reorganized to include only three parts in the Accomplishment Instructions, instead of five. (Repetitive inspections described in the original service bulletins as Parts Four and Five are now included under Parts One and Three in the revised service bulletins.)

The inspection areas specified in these revised service bulletins remain the same as in the original issue of the service bulletins. However, as a result of reports of cracking and corrosion service reports, the recommended interval for inspection of certain structural members has been reduced in the revised service bulletins to ensure that fatigue cracks and corrosion are found and repaired prior to any significant reduction in the structural integrity of the pressure bulkhead. The recommended interval for the repetitive visual inspections of the rear pressure bulkhead forward face has been shortened from 4,800 landings or 6 years, to 500 landings or 6 months, whichever occurs first; and certain visual inspections have been changed to non-destructive test inspections.

The Civil Aviation Authority classified the two revised service bulletins as mandatory.

The FAA has determined that, in order to adequately address the unsafe condition identified as corrosion on the rear pressure bulkhead, the proposed rule must be revised to reduce the visual repetitive inspection compliance time interval for the rear pressure bulkhead forward face from 4,800 landings or 6 years, to 500 landings or 6 months, whichever occurs first; and to change certain visual inspections to non-destructive test inspections. The actions would be required to be accomplished in accordance with the revised British Aerospace service bulletins described previously. (The proposed AD has been revised to cite the revised service bulletins as the appropriate sources of service information.)

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Paragraph (d) of the proposal has been revised to clarify the procedure for

requesting alternative methods of compliance with the AD.

There are approximately 87 Viscount Model 744, 745D, and 810 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 100 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. There would be no additional costs incurred as a result of the revisions to this proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $159,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-277-AD.

Applicability: All Viscount Model 744, 745D, and 810 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the bulkhead and associated decompression of the passenger cabin, accomplish the following:

(a) Within 90 days after the effective date of this AD, using both visual and specified non-destructive test methods, inspect the rear pressure bulkhead for corrosion, cracks, and damage, in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991 (for Model 810 series airplanes); or PTL 325, Issue 2, dated August 22, 1991 (for Model 744 and 745D series airplanes); as applicable.

(b) Repeat the visual and non-destructive test inspections required by paragraph (a) of this AD at the following intervals:

(1) For "Part One: Rear Pressure Bulkhead—Forward Face—Rear Face," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 500 landings or 6 months, whichever occurs first.

(2) For "Part Two: Rear Pressure Bulkhead Web Lap-Joints," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 1,600 landings or 2 years, whichever occurs first.

(3) For "Part Three: Rear Pressure Bulkhead Rear Face, Boundary Member, Adjacent Skin and Structure," as specified in the applicable service bulletin: Repeat the inspections at intervals not to exceed 2,500 landings or 3 years, whichever occurs first.

(c) If corroded, cracked, or damaged parts are found as a result of inspections required by paragraphs (a) or (b) of this AD, prior to further flight, repair in accordance with British Aerospace Viscount Alert Preliminary Technical Leaflet (PTL) 195, Issue 2, dated August 20, 1991; or PTL 325, Issue 2, dated August 22, 1991; as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 30, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-17426 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-72-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes. This proposal would require a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. This action would also require, under certain circumstances, a further visual inspection of the support channels/structure for deformation or cracks, and repair or replacement of damaged parts. This proposal is prompted by a report of an airplane running off the runway as a result of failure of the nose wheel steering quadrant support structure. The actions specified by the proposed AD are intended to prevent failure of the nose wheel steering structure, which could adversely affect the controllability of the airplane.

DATES: Comments must be received by August 31, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-72-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L

Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-72-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-72-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that a case has been reported of an airplane that ran off the runway as a result of seizure of the nose wheel steering quadrant and the upper steering control toggle link. The airplane had accumulated a total of 300 flight hours at the time of the incident. If uncorrected, this condition could result in failure of the nose wheel steering quadrant support structure, and subsequent loss of directional control of the airplane.

British Aerospace has issued Service Bulletin ATP-32-37, dated February 14, 1992, which describes procedures for a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. The service bulletin also recommends a further visual inspection, under certain circumstances, for deformation or cracks of the support channels/ structure, and repair or replacement of damaged parts. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, and repair, replacement, or refit, if necessary. This proposed AD action would also require, under certain circumstances, a further visual inspection of the support channels/ structure for deformation or cracks, and repair or replacement of damaged parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The FAA has confirmed that all 10 airplanes of U.S. registry have been inspected. Based on these figures, there will be no cost impact of the proposed AD on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-72-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2044, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time functional inspection to detect tightness or seizure of the nose wheel steering quadrant pivot and the upper steering control toggle link assembly, in accordance with British Aerospace Service Bulletin ATP-32-37, dated February 14, 1992.

(1) If the quadrant pivot/upper toggle link attachment bolt can be turned freely, in accordance with paragraph 2.A.(1) through 2.A.(8) of the Service Bulletin, no further action is necessary.

(2) If the quadrant pivot/upper toggle link attachment bolt is still tight, prior to further flight, if possible, remove and replace the bolt, in accordance with paragraphs 2.A.(9) and 2.A.(8) of the Service Bulletin. After this procedure, if the bolt turns freely, no further action is necessary.

(3) If the quadrant pivot/upper toggle link attachment bolt is found to be seized and cannot be removed, prior to further flight, check to see if the upper toggle link is free to rotate about the bolt, in accordance with paragraphs 2.A.(10) through 2.A.(12) of the Service Bulletin.

(i) If the upper toggle link is free to rotate about the bolt, prior to the accumulation of 50 landings after the functional inspection required by this AD, accomplish paragraph (a)(4) of this AD.

(ii) If the upper toggle link is not free to rotate about the bolt, prior to further flight, accomplish paragraph (a)(4) of this AD.

(4) If the upper toggle link has been checked in accordance with paragraph (a)(3)(i) or (a)(3)(ii) of this AD, repair the quadrant pivot/upper toggle link and bolt assembly, visually inspect the support channels/structure for deformation or cracks, and repair or replace any deformed or cracked structure, in accordance with paragraph 2.B. of the Service Bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 29, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-17427 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ANM-16]

Proposed Amended Transition Area; Lewistown, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the transition area at Lewistown, Idaho, to provide additional controlled airspace to accommodate the holding pattern for the VOR/DME-B approach for the Lewistown-Nez Perce County Airport, Lewistown, Idaho. The intent of this proposal is to accurately define controlled airspace for pilot reference.

DATES: Comments must be received on or before September 10, 1992.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Docket No. 92-ANM-16, 1601 Lind Avenue, SW., Renton, WA 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 92-ANM-16, 1601 Lind Avenue, SW., Renton, WA 98055-4056, Telephone: (206) 227-2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANM-16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055-4056 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to provide additional controlled airspace to accommodate the holding pattern for the VOR/DME-B approach for the Lewiston-Nez Perce County Airport, Lewiston, Idaho. The intent of this proposal is to accurately define controlled airspace for pilot reference. The airspace would be depicted on aeronautical charts. Transition areas are published in Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991 is amended as follows:

Section 71.181 Designation

* * * * *

ANM ID TA Lewiston, ID [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°29'25" N., long. 117°34'05" W.; east to lat. 46°30'45" N., long. 117°00'45" W.; north to lat. 46°34'25" N., long. 117°04'40" W.; then via the arc of a 16.5-mile radius centered on the Lewiston VOR (lat. 46°22'54" N., long. 116°52'07" W.); to lat. 46°27'00" N., long. 116°32'05" W.; east to lat. 46°25'30" N., long. 116°26'00" W.; south to lat. 46°13'20" N., long. 116°30'00" W.; west to lat. 46°14'40" N., long. 116°35'40" W.; then via the arc of a 16.5-mile radius centered on the Lewiston VOR; to lat. 46°09'00" N., long 116°46'50" W.; north to lat. 46°17'00" N., long. 116°49'10" W.; west to lat. 46°18'05" N., long. 117°00'11" W.; west to lat. 46°17'42" N., long. 117°22'00" W.; south to lat. 46°10'30" N., long. 117°26'20" W.; west to lat. 46°12'00" N., long. 117°35'40" W.; north to point of beginning; that airspace extending upward from 1200 feet above the surface, within an area bounded by a line beginning at lat. 46°00'00" N., long. 116°00'00" W., to lat. 46°00'00" N., long. 116°23'00" W., to lat. 45°39'00" N., long. 116°10'00" W., to lat. 45°30'00" N., long. 116°14'00" W., to lat. 45°23'00" N., long. 116°21'00" N., to lat. 45°25'00" N., long. 116°34'00" W., to lat. 45°30'00" N., long. 116°46'00" W., to lat. 46°00'00" N., long. 116°56'00" W., thence west along lat. 46°00'00" N. to the Walla Walla VOR/DME (lat. 46°05'14" N., long. 118°17'29" W.) 16.6-mile radius, thence north along the 16.6-mile radius until intercepting V536, thence east along V536 to long. 116°00'00" W., thence south along long. 116°00'00" W., to lat. 46°00'00" N., to beginning.

* * * * *

Issued in Seattle, Washington, on July 10, 1992.

Helen Parke,

Assistant Manager, Air Traffic Division.

[FR Doc. 92–17368 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 20, and 101

[Docket No. 92N–0162]

Food Labeling; Format for Nutrition Label; Notice of Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on the notice of proposed rulemaking on the format for the nutrition label that it published in the **Federal Register** of July 20, 1992. This hearing will provide an opportunity for interested persons to present their views on the issues raised by the proposal. The public hearing is being held in accordance with 21 CFR Part 15.

DATES: Written notices of participation should be filed by August 10, 1992. The public hearing will be held on Monday, August 17, 1992 (and on August 18, 1992, if a second day is necessary), 8 a.m. to 6 p.m. The record of the underlying rulemaking will remain open for comments until August 19, 1992.

ADDRESSES: The public hearing will be held in the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Written notices of participation and any comments are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Transcripts of the hearing and copies of data and information submitted during the hearing will be available for review at the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document. The comments on the nutrition label format proposal will be available for review as part of the docket of the subject rulemaking. A copy of the proposal that was published July 20, 1992 (57 FR 32058), can be obtained by contacting John Tisler, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFF–326), 200 C St. SW., Washington, DC 20204, 202–205–5251 between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Persons needing information about the various nutrition label format issues to be addressed at the public hearing should contact: Raymond E. Schucker, Center for Food Safety and Applied Nutrition (HFF–240), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–8956 or, Charles Edwards, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, 202–205–0080.

Questions about the hearing in general should be directed to: Annette Funn, Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006, 301–443–9767 (FAX).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal government has launched a major initiative to improve the food label, led by Louis W. Sullivan, Secretary of Health and Human Services, David A. Kessler, Commissioner of Food and Drugs, and Edward Madigan, Secretary of Agriculture. In the **Federal Register** of July 20, 1992, as part of that initiative and in response to section 2(b)(1)(A) of the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments), FDA published a proposal on the format of the nutrition label (docket number 91N–0162). In its nutrition label format proposal, FDA requested public comment on the matters set forth. In addition, USDA intends to publish soon in the **Federal Register** a proposal on the nutrition label format for meat and poultry products. Interested persons are encouraged to review these proposals to become familiar with the many issues that they address.

II. Scope of Hearing

Comments are specifically requested on what format would best meet the requirement in the 1990 amendments that required nutrition information be conveyed to the public in a manner which enables the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet (section 2(b)(1)(A) of the 1990 amendments). Although participants may comment on any issue raised by the nutrition label format proposals, time for presentations will be limited. Therefore, participants will be well advised to limit their comments to an indepth discussion of one or two topics. Participants can present the full range of their views in the written comments that they submit on the FDA and USDA nutrition label format proposals.

III. Notice of Hearing under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be conducted in accordance with 21 CFR Part 15.

The presiding officer will be the Commissioner of Food and Drugs or his designee. The Administrator of the Food Safety and Inspection Service, USDA, or his designee, will also participate. The presiding officer will be accompanied by a panel of FDA employees with the relevant expertise.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before August 10, 1992. To ensure timely handling, any outer envelope should be clearly marked with the docket number found in brackets in the heading of this document and the statement "Nutrition Label Format Hearing." The notice of participation should contain the name, address, telephone number, facsimile number, affiliation (if applicable) of the participant, and a brief summary of the presentation. FDA asks groups that have similar interests to consolidate their comments. FDA will allocate the time available for the hearing among the persons who have properly filed a notice of participation. If time permits, FDA may allow other interested persons attending the hearing who did not submit a notice of participation, in advance, to make an oral presentation at the conclusion of the hearing.

FDA will schedule each appearance after reviewing the notices of participation and accompanying information, and notify each participant by mail, telephone, or FAX of when the time allotted to the person's oral presentation is scheduled to begin. Presentations will be limited to 5 to 10 minutes depending on the number of participants. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may, on or before August 19, 1992, submit to the Dockets Management Branch (address above) written comments on the FDA proposed rulemaking that underlies this hearing. Two copies of any comments are to be submitted by organizations. Individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of the proposal. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 CFR 15.30(e) and (f), the hearing is informal, and the rules of evidence do not apply. No participant will be allowed to interrupt the presentation of another participant. Only the presiding officer and panel members will be able to question any person during or at the conclusion of their presentation.

Public hearings, including hearings under Part 15, are subject to FDA's guidelines (21 CFR Part 10, Subpart C) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Any handicapped persons requiring special accommodations in order to attend the hearings should direct those needs to Annette Funn (address above).

Individuals and organizations who testify at this hearing should submit three copies of their written testimony for the official record on the day they are to appear at the hearing.

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in Part 15, this notice acts as a waiver of those provisions as specified in 21 CFR 15.30(h).

Dated: July 17, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-17363 Filed 7-20-92; 3:54 p.m.]

BILLING CODE 4160-01-F

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21 CFR Part 101

[Docket Nos. 91N-0099, 91N-0100, and 91N-0101]

RIN 0905-AB67

Food Labeling: Health Claims; Antioxidant Vitamins and Cancer, Dietary Fiber and Cardiovascular Disease, and Folic Acid and Neural Tube Defects; Reopening of the Comment Period.

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for 30 days on three proposed rules concerning health claims on certain nutrient-disease relationships, including antioxidant vitamins and cancer, dietary fiber and cardiovascular disease, and folic acid and neural tube defects, that appeared in the **Federal Register** of November 27, 1991 (56 FR 60624, 60610, and 60582, respectively). This action is being taken because the agency has received several new studies on the relationship between antioxidant vitamins and cancer and dietary fiber and cardiovascular disease that appear to be significant. In addition, on July 27, 1992, the Centers for Disease Control (CDC) will be holding a meeting that may bring to light new information on the relationship between the ingestion of folic acid and neural tube defects. The agency is also providing this additional comment period in conjunction with this meeting.

DATES: Written comments by August 24, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Linda Tollefson, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington DC 20204, 202-205-5652.

SUPPLEMENTARY INFORMATION: On November 27, 1991, FDA published three proposals in the **Federal Register** that announced its tentative findings that a basis does not exist on which to authorize the use on foods, including dietary supplements, of health claims relating to an association between (1) antioxidant vitamins and cancer (56 FR 60624); (2) dietary fiber and cardiovascular disease (56 FR 60582); and (3) folic acid and neural tube defects (56 FR 60610). These proposals were published under the requirements of sections 3(b)(1)(A)(vi) and (x) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). These provisions require, in part, that the agency determine whether to authorize health claims respecting these nutrient-disease relationships.

FDA has received information concerning several new studies on antioxidant vitamins and cancer and on dietary fiber and cardiovascular disease. Because these studies appear to present significant new information that could not be readily discerned from the studies that FDA reviewed in its proposals, FDA is providing 30 days for comment on these studies.

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Antioxidant Vitamins and Cancer (Docket No. 91N-0101):

1. Benito, E., A. Stiggelbout, F. X. Bosch, A. Obrador, J. Kaldor, M. Mulet, N. Munoz, "Nutritional Factors in Colorectal Cancer Risk: A Case-control Study in Majorca," *International Journal of Cancer*, 49:161–167, 1991.

2. Boeing, H., R. Frentzel-Beyme, M. Berger, et al., "Case-control study on Stomach Cancer in Germany," *International Journal of Cancer*, 47:858–864, 1991.

3. Bravo, M. P., E. Castellanos, J. del Ray Calero, "Dietary Factors and Prostatic Cancer," *Urologia Internalis*, 46:163–166, 1991.

4. De Mesquita, H. B. B., P. Maisonneuve, S. Runia, C. J. Moreman, "Intake of Foods and Nutrients and Cancer of the Exocrine Pancreas: A Population-based Case-control Study in the Netherlands," *International Journal of Cancer*, 48:540–549, 1991.

5. Enstrom, J. E., L. E. Kanim, M. A. Klein, "Vitamin C Intake and Mortality Among a Sample of the United States Population," *Epidemiologic Reviews*, 3:194–202, 1992.

6. Gerber, M., S. Ricardson, R. Salkeld, P. Chappuis, "Antioxidants in Female Breast Cancer Patients," *Cancer Investigation*, 9:421–428, 1991.

7. Graham, S., R. Hellman, J. Marshall, J. Freudenheim, J. Venna, M. Swanson, M. Zielezny, T. Nemoto, N. Stubbe, T. Raimondo, "Nutritional Epidemiology of Postmenopausal Breast Cancer in Western New York," *American Journal of Epidemiology*, 134:552–566, 1991.

8. Herrero, R., N. Potischman, L. A. Brinton, W. C. Reeves, M. Stacewicz-Sapuntzakis, C. J. Jones, M. M. Brenes, F. Tenerio, R. C. de Britton, E. Gaitan, "A Case-control Study of Nutrient Status and Invasive Cervical Cancer II., Serologic Indicators," *American Journal of Epidemiology*, 134:1347–1355, 1991.

9. Knekt, P., R. Jarvinen, R. Seppanen, A. Rissanen, A. Aromaa, O. P. Heinonen, D. Albanes, M. Heinonen, E. Pukkala, L. Teppo, "Dietary Antioxidants and The Risk of Lung Cancer," *American Journal of Epidemiology*, 134:471–479, 1991.

10. Knight, T. M., D. Forman, H. Shishima, H. Bartsch, "Endogenous Nitrosation of L-proline by Dietary-derived Nitrate," *Nutrition and Cancer*, 15:195–203, 1991.

11. Moller, H., J. Landt, E. Pedersen, P. Jensen, H. Autrup, O. M. Jensen, "Urinary Excretion on N-Nitrosoproline in Relation to Consumption of Raw and Cooked Vegetables in a Danish Rural Population," *IARC Scientific Publications*, 105:168–171, 1991.

12. Potischman N., R. Herrero, L. A. Brinton, W. C. Reeves, M. M. Brenes, F. Tenerio, R. C. de Britton, E. Gaitan, "A Case-control Study of Nutrient Status and Invasive Cervical Cancer I., Dietary Indicators," *American Journal of Epidemiology*, 134:1335–1346, 1991.

13. Reed, P. I., B. J. Johnston, C. L. Walters, M. J. Hill, "Effect of Ascorbic Acid on the Intragastric Environment in Patients at Increased Risk of Developing Gastric Cancer," *IARC Scientific Publications*, 105:139-142, 1991.

14. Riboli, E., C. A. Gonzalez, G. Lopez-Abente, M. Errezola, I. Izarzugaza, A. Escolar, M. Nebot, B. Hemon, A. Agudo, "Diet and Bladder Cancer in Spain: A Multi-centre Case-control Study," *International Journal of Cancer*, 49:214–219, 1991.

15. Richardson, S., M. Gerber, S. Cenee, "The role of Fat, Animal Protein and Some Vitamin Consumption in Breast Cancer: A Case-control Study in Southern France," *International Journal of Cancer*, 27:420–423, 1991.

16. Rolton, H. A., K. M. McConnell, K. S. Modi, A. I. Macdougall, "The Effect of Vitamin C Intake on Plasma Oxalate in Patients on Regular Haemodialysis," *Nephrology Dialysis Transplantation*, 6:440–443, 1991.

17. Shi, K. X., D. J. Mao, W. F. Cheng, Y. S. Ji, L. Z. Xu, "An Approach to Establishing N-Nitroso Compounds as the Cause of Gastric Cancer," *IARC Scientific Publications*, 105:143-145, 1991.

18. Sierra, R., H. Ohshima, N. Munoz, S. Teuchmann, A. S. Pena, C. Malaveille, B. Pignatelli, A. Chinnock, F. El Ghissaissi, C. Chen, A. Hautefeuille, C. Gamboa, H. Bartsch, "Exposure to N-Nitrosamines and Other Risk Factors for Gastric Cancer in Costa Rican Children," *IARC Scientific Publications*, 105:162-167, 1991.

19. Sobala, G. M., B. Pignatelli, C. J. Schorah, et al., "Levels of Nitrite, Nitrate, N-nitroso Compounds, Ascorbic Acid, and Total Bile Acids in Gastric Juice of Patients With and Without Precancerous Conditions of the Stomach," *Carcinogenesis*, 12:193–198, 1991.

20. Stillwill, W. G., H. X. Xu, J. Glogowski, J. S. Wishnok, S. R. Tannenbaum, P. Correa, "Comparison of Urinary Nitrate, N-Nitrosoproline, 7-Methylguanine and 3-Methyladenosine Levels in a Human Population at Risk for Gastric Cancer," *IARC Scientific Publications* 105:83-87, 1991.

21. You, W. C., Y. S. Chang, Z. T. Yang, L. Zhang, G. W. Xu, W. J. Blot, R. Kneller, L. K. Keefer, J. F. Fraumeni, Jr., "Eliological Research on Gastric Cancer and its Precursor Lesions in Shandong, China," *IARC Scientific Publications*, 105:33-38, 1991.

22. Zaridze, D., Y. Lifanova, D. Maximovitch, N. E. Day, S. W. Duffy, "Diet, Alcohol Consumption and Reproductive Factors in a Case-control Study of Breast Cancer in Moscow," *International Journal of Cancer*, 48:493–501, 1991.

23. Zatonski, W., K. Przewozniak, G. R. Howe, P. Maisonneuve, A. M. Walker, P. Boyle, "Nutritional Factors and Pancreatic Cancer: A Case–control Study from South–West Poland," *International Journal of Cancer*, 48:493–501, 1991.

24. Zhang, R. F., D. J. Deng, Y. Chen, H. Y. Wu, C. S. Chen, "Role of Nitrosamides in the High Risk for Gastric Cancer in China," *IARC Scientific Publications*, 105:152-157, 1991.

Dietary Fiber and Cardiovascular Disease (Docket No. 91N-0099):

1. Anderson, J. W., "Cholesterol-lowering Effects of Psyllium-enriched Cereal," unpublished report from industry, 1991.

2. Anderson, J. W., T. L. Floore, P. B. Geil, D. S. O'Neal, T. K. Balm, "Hypocholesterolemic Effects of Different Bulk-forming Hydrophilic Fibers as Adjuncts to Dietary Therapy in Mild to Moderate Hypercholesterolemia," *Archives of Internal Medicine*, 151:1597–1602, 1991.

3. Bremer, J. M., R. S. Scott, C. J. Lintott, "Oat Bran and Cholesterol Reduction: Evidence Against Specific Effect," *Australia and New Zealand Journal of Medicine*, 21:422–426, 1991.

4. Cara, L., P. Borel, M. Armand, M. Senft, H. Lafont, et al., "Plasma Lipid Lowering Effects of Wheat Germ in Hypercholesterolemic Subjects," *Plant Foods for Human Nutrition*, 41:135–150, 1991.

5. "Cholesterol-lowering Effects of Ready-to-eat Cereal Containing Psyllium," unpublished study submitted from food industry with comments, 1991.

6. Earll, J. M., "Feasibility and Metabolic Effects of a Precisely Measurable Dietary Food Supplement," unpublished report submitted with comments, 1986.

7. Haskell, W. L., G. A. Spiller, C. D. Jensen, B. K. Ellis, J. E. Gates, "Role of Water-soluble Dietary Fiber in the Management of Elevated Plasma Cholesterol in Healthy Subjects," *The American Journal of Cardiology*, 69:433–439, 1992.

8. Israelsson, B., G. Järnblad, K. Persson, "Serum Cholesterol Reduced with Fibrex℠ Sugar-beet Fiber Preparation," unpublished, submitted with comments from the food industry, 1991.

9. Jenkins, D. J. A., S. Mueller, T. M. S. Wolever, V. Rao, T. Ransom, D. Boctor, et al., "High Soluble Fiber Foods Reduce Serum Lipids Even When Diets are Already Low in Saturated Fat and Cholesterol," unpublished report submitted from industry, 1991.

10. Jenkins, D. J. A., T. M. S. Wolever, V. Rao, R. Hegele, S. Mitchell, et al., "High Fiber Foods Reduce Serum Lipids Even on Diets Low in Saturated Fat and Cholesterol," unpublished report from industry, 1991.

11. Leadbetter, J., M. J. Ball, J. I. Mann, "Effects of Increasing Quantities of Oat Bran in Hypercholesterolemic People," *American Journal of Clinical Nutrition*, 54:841–845, 1991.

12. Karlander, S., I. Armyr, S. Efendic, "Metabolic Effects and Clinical Value of Beet Fiber Treatment in NIDDM Patients," *Diabetes Research and Clinical Practice*, 11:65–72, 1991.

13. Kawatra, A., A. C. Kapoor, S. Seghal, "Hypocholesterolemic Effect of Guar Gum in Overweight Adults," *Plant Foods for Human Nutrition*, 41:241–245, 1991

14. O'Connor, R. R., J. Jin, D. S. Hwang, "A Multicenter Study of a Five Fiber Supplement in the Treatment of Hypercholesterolemia," Final Report, unpublished study submitted with comments, 1992.

15. Resnicow, K., J. Barone, A. Engle, S. Miller, N. Haley et al., "Diet and Serum Lipids in Vegan Vegetarians: A Model for Risk Reduction," *Journal of the American Dietetic Association*, 91:447 453, 1991.

16. Spiller, G. A., J. W. Farquhar, J. E. Gates, S. F. Nichols, "Guar Gum and Plasma Cholesterol, Effect of Guar Gum and an Oat Fiber Source on Plasma Lipoproteins and Cholesterol in Hypercholesterolemic Adults," *Arteriosclerosis and Thrombosis*, 11:1204–1208, 1991..

17. Tinker, L. F., B. O'Schneeman, P. A. Davis, D. D. Gallaher, C. R. Waggoner, "Consumption of Prunes as a Source of Dietary Fiber in Men with Mild

Hypercholesterolemia," *American Journal of Clinical Nutrition*, 53:1259–1265, 1991.

18. Whyte, J., R. McArthur, D. Topping, P. Nestel, "Oat Bran Lowers Plasma Cholesterol in Mildly Hypercholesterolemic Men," *Journal of the American Dietetic Association*, 92:446–449, 1992.

19. Wolever, T., D. J. A. Jenkins, S. Mueller, D. Boctor, T. P. P. Ransom, et al., "Method of Administration Influences the Serum Cholesterol-lowering Effect of Psyllium," unpublished study submitted with comments.

20. Wolever, T., D. J. A. Jenkins, S. Mueller, C. Mehling, L. Katzman, et al., "Psyllium Reduces Blood Lipids to a Similar Extent in Hyperlipidemic Men and Women," unpublished study submitted with comments.

The agency is also reopening the period for submission of comments on the proposed rule on folic acid and neural tube defects because CDC will be holding a public meeting on this topic on July 27, 1992, in Atlanta, GA 30333 (57 FR 29323, July 1, 1992). FDA is reopening the comment period to permit the submission of any scientific data and information that may become publicly available as a result of that meeting and to provide an opportunity for comment on that data and information.

The agency points out, however, that it has been advised that the scientific evidence to be discussed at the CDC meeting is not yet publicly available, and FDA is not aware of when that evidence will become publicly available. In this regard, the agency also points out that the 1990 amendments require that the evidence relied upon by the agency as the basis for allowing health claims relating to a nutrient-disease relationship on the label and labeling of foods be publicly available, and that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the evidence supports the claim.

In accordance with section 3(b)(1)(B) of the 1990 amendments, the agency must issue by November 8, 1992, final regulations to implement section 403(r) of the Federal Food, Drug, and Cosmetic Act. If the agency does not promulgate final regulations by November 8, 1992, the 1990 amendments provide that the regulations proposed on November 27, 1991, concerning the relationship between the ingestion of (1) antioxidant vitamins and cancer, (2) dietary fiber and cardiovascular disease, and (3) folic acid and neural tube defects will become final regulations. The agency has determined that 30 days is the maximum time that it can provide for the submission of comments and still meet this statutory deadline for the issuance of final regulations. Thus, the agency is advising that it will not consider any requests under 21 CFR 10.40(b) for extension of the comment period beyond August 24, 1992. The agency must limit the comment period to no more than 30 days to assure sufficient time to develop a final rule based on the proposal and any additional comments it receives.

Interested persons may on or before August 24, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–17362 Filed 7–20–92; 3:54 p.m.]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[PP 6F3380, FAP 8H5502, and FAP 8H5568/P547; FRL–4073–9]

RIN 2070–AC18

Pesticide Tolerances and Food and Feed Additive Regulations for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes tolerances and food and feed additive regulations for the combined residues of the herbicide glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethyl phosphonic acid. The specific proposals are: an amended tolerance in or on the raw agricultural commodities (RACs) soybeans from 6 parts per million (ppm) to 20 ppm; a tolerance on soybean straw at 20 ppm; a food additive regulation proposing increases in tolerances for the processed human food instant tea from 4.0 ppm to 7.0 ppm; a feed additive regulation for citrus molasses at 1 ppm; and amended feed additive tolerances for dried citrus pulp from 0.4 ppm to 1 ppm and soybean hulls from 20 ppm to 100 ppm. This rule was requested by Monsanto Co. and would establish the maximum permissible residues of the herbicide in or on these RACs, this processed human food, and these animal feed commodities.

DATES: Comments, identified by the document control number [PP 6F3380, FAP 8H5502, FAP 8H5568/P547], must be received on or before August 24, 1992.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-305-6800.

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of June 11, 1986 (51 FR 21233), in which it was announced that Monsanto Co., 1101 17th St., NW., Washington, DC 20036, proposed amending 40 CFR 180.364 by increasing established tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the herbicide glyphosate (N-phosphonomethylglycine) and its metabolite aminomethyl-phosphonic acid in or on soybeans from 6 ppm to 20 ppm and soybean hay from 15 ppm to 200 ppm and proposed amending 21 CFR 561.253 by increasing the established food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of glyphosate in or on soybean hulls from 20 ppm to 100 ppm.

There were no comments or requests for referral to an advisory committee

received in response to the notice of filing.

The Agency subsequently issued a recodification document, published in the Federal Register of June 29, 1988 (53 FR 24688), redesignating 21 CFR part 561 under 40 CFR part 186 and redesignating glyphosate as 40 CFR 186.3500.

On August 26, 1988, the Agency received FAP 8H5568 from Monsanto Co. proposing to amend 40 CFR 185.3500 under section 409 of the FFDCA, 21 U.S.C. 348, permitting the combined residues of the herbicide glyphosate and its metabolite aminomethyl-phosphonic acid, by increasing the established food additive regulation on instant tea from 4.0 ppm to 7.0 ppm, and proposing to amend 40 CFR 186.3500 under section 409 of the FFDCA (21 U.S.C. 348) for these chemicals by increasing the established feed additive regulation on citrus, pulp, dried, from 0.4 ppm to 1.0 ppm and establishing a feed additive regulation to allow residues of 1.0 ppm in citrus molasses.

Subsequently, the petitioner amended PP 6F3380 by submitting a revised section F deleting the proposed increase in tolerance for soybean hay and proposing the establishment of a tolerance for the combined residues of the herbicide glyphosate and its metabolite on soybean straw at 200 ppm. Because the increased tolerances for instant tea to 7.0 ppm and citrus pulp, dried, to 1.0 ppm, and the proposed tolerances on citrus molasses of 1.0 ppm and soybean straw at 200 ppm have not been previously proposed, this document is being published as a proposed rule to allow a period of 30 days for public comment.

The data submitted in the petitions and other relevant material have been evaluated. The glyphosate toxicological data listed below were considered in support of these tolerances.

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and IV.

2. A 1-year feeding study with dogs fed dosage levels of 1, 20, 100, and 500 milligrams/kilogram/day (mg/kg/day) with a no-observable-effect level (NOEL) of 500 mg/kg/day.

3. A 2-year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

4. A chronic feeding/carcinogenicity study in rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) and a systemic NOEL of 31 mg/kg/day (HDT). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

5. A chronic feeding/carcinogenicity study in rats fed dosage levels of 0, 100, 400, and 1,000 mg/kg/day with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 1,000 mg/kg/day (HDT) and a systemic NOEL of 400 mg/kg/day based on decreased body weight and body weight gain in females, cataracts in males, decreased urinary pH in males, increased relative liver weights (to body) at 12 months, increased absolute and relative liver weights (to brain) at 24 months at 1,000 mg/kg/day (HDT).

6. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternbrae and decrease in fetal body weight at 3,500 mg/kg/day and a maternal NOEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head and deaths at 3,500 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with no developmental effects occurring up to and including 350 mg/kg/day (HDT); a maternal NOEL of 175 mg/kg/day based on increased incidences of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

8. A multigeneration reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a developmental NOEL of 10 mg/kg/day based on increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) of male F_3b pups. No effects on fertility or reproductive parameters were noted up to and including 30 mg/kg/day (HDT).

9. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocytes; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and a dominant-lethal mutagenicity test in mice (all negative).

The reference dose (RfD) based on the multigeneration rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food and feed additive regulations is 0.005095 mg/kg/ bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.004854 (4.9 percent of the RfD). These tolerances and food and feed additive regulations utilize a total of 10 percent of the RfD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants, children aged 1 to 6, and nursing females, the current action and previously established tolerances and food and feed additive regulations utilize, respectively, a total of 39, 19.1, and 4.8 percent of the RfD, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

There are no desirable data lacking for this pesticide. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which tolerances are established. The carcinogenic potential of glyphosate was first considered by a panel, then called the Toxicology Branch Ad Hoc Committee in 1985. The Committee, in a consensus review dated March 4, 1985, classified glyphosate as a Group C carcinogen based on an increased incidence of renal tumors in male mice. The Committee also concluded that dose levels tested in the 26-month rat study were not adequate for assessment of glyphosate's carcinogenic potential in this species. These findings, along with additional information, including a reexamination of the kidney slides from the long-term mouse study, were referred to the FIFRA Scientific Advisory Panel (SAP). The SAP in its report dated February 24, 1986, classified glyphosate as a Group D carcinogen (inadequate animal evidence of carcinogenic potential). The SAP concluded that, after adjusting for the greater survival in the high-dose mice compared to concurrent controls, that no statistically significant pairwise differences existed, although the trend was significant.

The SAP determined that the carcinogenic potential of glyphosate could not be determined from existing data and proposed that the rat and/or mouse studies be repeated in order to classify these equivocal findings. On reexamination of all information, the Agency classified glyphosate as a Group D carcinogen and requested that the rat study be repeated and that a decision on the need for a repeat mouse study would be made upon completion of review of the rat study.

Upon receipt and review of the second rat chronic feeding/carcinogenicity study, all toxicological findings for glyphosate were referred to the Health Effects Division Carcinogenicity Peer Review Committee on June 26, 1991, for discussion and evaluation of the weight of evidence on glyphosate with particular emphasis on its carcinogenic potential. The Peer Review Committee classified glyphosate as a Group E (evidence of noncarcinogenicity for humans), based upon lack of convincing carcinogenicity evidence in adequate studies in two animal species. This classification is based on the following findings: (1) None of the types of tumors (pancreatic islet cell adenomas in male, thyroid c-cell adenomas and/or carcinomas in males and females, and hepatocellular adenomas and carcinomas in males) observed in the rat study were determined to be compound related; (2) the renal tubular neoplasms occurring in the high-dose male mice were determined not to be compound related; (3) glyphosate was tested up to the limit dose on the rat and up to levels higher than the limit dose in mice; and (4) there is no evidence of genotoxicity for glyphosate. Also, currently there are no structurally related pesticides registered by the Agency which resemble glyphosate.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methodology (HPLC) is available for enforcement purposes and has been published in the Pesticide Analytical Manual (PAM), Vol. II. Any secondary residues occurring in liver and kidney of cattle, goats, horses, poultry, and sheep will be covered by existing tolerances.

Based on the information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health and the establishment of a food additive and a feed additive regulation by amending 40 CFR parts 185 and 186 will be safe. The pesticide is considered useful for the purpose for which the tolerances are sought and is capable of achieving the intended physical or technical effect. It is proposed, therefore, that the tolerances and food and feed additive regulations be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6F3380, FAP 8H5502, FAP 8H5568/P547]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180, 185, and 186

Administrative practice and procedure, Agricultural commodities, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 30, 1992.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.364, by revising the entry in the paragraph (a) table for soybeans and adding alphabetically the raw agricultural commodity soybean straw to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Soybean straw	200
Soybeans	20.0
* * * * *	

* * * * * *

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 185.3500(a)(2) by revising in the table therein the entry for tea, instant to read as follows:

§ 185.3500 Glyphosate.

(a) * * *

(2) * * *

Food	Parts per million
* * * * *	
Tea, instant	7.0

* * * * * *

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.3500(a) by revising the table therein, to read as follows:

§ 186.3500 Glyphosate.

(a) * * *

Feeds	Parts per million
Citrus molasses	1.0
Citrus, pulp, dried	1.0
Soybean hulls	100

* * * * * *

[FR Doc. 92-17138 Filed 7-22-92; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004-AB72

[WO-610-4111-02-24 1A]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 1, Approval of Operations

AGENCY: Bureau of Land Management, Interior

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the existing Onshore Oil and Gas Order No. 1, which was published on November 12, 1983 (48 FR 48916), pursuant to 43 CFR 3164.1. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. It also covers most approvals necessary for subsequent well operations, including abandonment. These approvals are granted by the Bureau of Land management (BLM). The revision is necessary due to provisions of the 1987 Federal Onshore Oil and Gas Leasing Reform Act (Reform Act), legal opinions and court cases since the Order was issued, and other policy and procedural changes. The revised Order would address the submittal of a complete Application for Permit to Drill or Deepen package, including a Drilling Plan, Surface Use Plan of Operations, evidence of bond coverage, and Operator Certification. The process for approval is explained including onsite predrill inspection, public notification, coordination with other surface management agencies, agency deadlines and time expectations, and Federal and operator responsibilities. The approval process for certain subsequent well operations is also explained. The revised Order would set forth the process whereby the Application for Permit to Drill (APD) package may serve as the application for an associated BLM right-of-way. This Order would also be incorporated by the Forest Service into its oil and gas regulations.

DATES: Comments should be submitted by September 21, 1992. Comments received or postmarked after this date may not be considered in the decision process of the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday (excepting Federal holidays).

FOR FURTHER INFORMATION CONTACT: Lynn E. Rust, (307) 772-2293 or Sie Ling Chiang, (202) 653-2127.

SUPPLEMENTARY INFORMATION: The regulations at 43 CFR part 3160, Onshore Oil and Gas Operations, provide in § 3164.1 for the issuance of Onshore Oil and Gas Orders to supplement and implement specific provisions of the regulations. All Orders are promulgated by the rulemaking process and, when issued in final form, apply nationwide to all Federal and Indian (except the Osage tribe) oil and gas leases. The table in 43 CFR 3164.1(b) lists existing Orders. This proposed rulemaking will revise existing Onshore order no. 1 (the Order), which supplements primarily §§ 3162.3 and 3162.5. Section 3162.3 covers conduct of operations, application to drill on a lease, subsequent well operations, other miscellaneous lease operations, and abandonment. Section 3162.5 covers environmental and safety obligations. For further information on the Order, refer to the **Federal Register** of November 12, 1983, 48 FR 48916.

There are four primary reasons the Order is being revised:

1. The 1987 Reform Act includes two significant changes affecting APD processing on Federal leases. The first is the addition of a provision for public notification of a proposed action prior to approving an APD or substantially modifying the term or terms of a Federal lease. Because the Act specifically requires such notification, the Order would describe processes to satisfy the statutory requirement, and would incorporate them into current operating procedures.

The second important change is the allocation of authority to the Forest Service (FS) to approve and regulate the surface disturbing actions associated with oils and gas wells on National Forest System (NFS) lands, and to determine reclamation requirements. Where NFS lands are involved, the Surface Use Plan of Operations included in the APD is now approved by the FS, along with surface disturbing aspects of related and subsequent operations. The FS has actively participated in this revision, and will apply the Order in its review of oil and gas surface operations.

2. In response to protests on two Resource management Plans, in April 1988, the Solicitor of the Department of the Interior issued two opinions related to oil and gas issues. The first, and most far-reaching, concerned BLM responsibilities on Federal leases overlain by private surface (split-estate). In this opinion, the Solicitor ruled that the national Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA) required BLM to regulate exploration, development, and abandonment on Federal leases on split-estate lands in essentially the same manner as lease overlain by Federal surface. The Solicitor also stated that while a private owner's wishes should weigh in compliance decisions, they do not overrule compliance requirements of these statutes and their implementing regulations.

The second opinion lays out in more detail BLM's responsibilities under NHPA, elucidating further the discussion on cultural resources in the first opinion.

The pertinent requirements of the present Order No. 1 do not fully conform to the Solicitor's opinions. Therefore, amendments of portions of the order are required.

3. All requirements needed to approve a BLM right-of-way (R/W) are required to be met before it can be granted, whether or not the R/W is mineral related. However, it has been BLM policy that R/W applications in support of oil and gas wells can be initiated by APDS in lieu of a formal R/W form. This change involving APD submittals and necessary additional procedures is absent from the existing Order because the policy allowing such applications was implemented after the order was issued.

4. Existing Order No. 1 is over 6 years old. Conditions, regulations, policies, procedures, and requirements have been altered, added, and eliminated since the Order was issued. Because of these changes in law and policy, extensive amendments of the order are needed. The revision proposed is so extensive that a paragraph by paragraph comparison is not practical and would be confusing.

The former 8-point Drilling Program (also referred to as the Subsurface Use Plan) is now the 9-point Drilling Plan; and the former 13-point Surface Use Program (or Plan) is now the 12-point Surface Use Plan of Operations (SUPO). Note that the former item 13 of the Surface Use Program, "Operator Certification", has been removed from the SUPO and made into a separate component of the APD package. This was done to emphasize and ensure that the Operator Certification covers the

entire APD package and not just the SUPO.

The principal authors of this proposed rulemaking are Lynn Rust of the Wyoming State Office, Frank Lanzetta, Washington Office, Paul Dunlevy, California State Office, George Diwachak, Utah State Office, John Duhon, Jackson District Office, Bureau of Land Management, and William Robinson, Rocky Mountain Region, U.S. Forest Service, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. In part, the rule would merely transfer authority to regulate surface-disturbing activity from the BLM to the Forest Service. In implementing the Solicitor's opinion on the application of environmental and historical protection statutes to split estate lands, the rule would affect a minority of oil and gas leases. Most lessees with such leases would not be obligated to spend large sums to comply because in most cases endangered species and historical resources are not present. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The exact amounts that would have to be spent in both compliance and enforcement are not known, but it is clear that they will not approach the threshold amounts specified in the Executive Order. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rules would not require the surrender of any lease rights or otherwise lead to the loss of private property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this proposed Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas exploration, Oil and gas production, Public lands—mineral resources, Reporting requirements.

Under the authorities cited below, part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: 30 U.S.C. 181 *et eq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a–396q; 25 U.S.C. 397; 25 U.S.C. 398; 25 U.S.C. 398a–398e; 25 U.S.C. 399; 43 U.S.C. 1457, see also Attorney General's Opinion of April 2, 1941 (45 Op.Atty.Gen 41); 40 U.S.C. *et seq.*; 42 U.S.C. 4321 *et seq.*; 42 U.S.C. 6508; Pub. L. 97–78; 30 U.S.C. 1701 et seq.; and 25 U.S.C. 2102.

2. Section 3164.1(b) is amended by revising the first entry on the table:

§ 3164.1 Onshore oil and gas orders.

* * * * *

(b) * * *

Order No. subject	Effective date	Federal Register reference	Supersedes
1. Approval of operations.....			Order No. 1 (11/21/83)
* *	*	*	*

Note: Numbers will be assigned by the Washington Office, Bureau of Land Management, to additional Orders as they are prepared for publication and added to this table.

Dated: December 24, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

Editorial Note: This document was received in the Office of the Federal Register on July 22, 1992.

Appendix—Text of Onshore Oil and Gas Order No. 1

Note: This appendix is published for information only and will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 1

Approval of Operations

I. Introduction

A. Authority
B. Purpose
C. Scope

II. General

A. Definitions.
B. Requirements.
C. Modification of Lease Stipulation.
D. Rights-of-Way/Special Use Permits
E. Appeal Procedures

III. APD Procedures

A. Surveying, Staking, and Inventories
B. Posting Requirements
C. APD Package
D. Notice of Staking Option.
E. Processing Timeframes
F. Environmental Requirements

IV. Split Estate (Private Surface/Federal Minerals or Private Surface/Indian Minerals)

A. Environmental Protection of Resources
B. Bonding

V. Indian Oil and Gas Leases

A. Approval of Operations
B. Surface Use

VI. Subsequent Operations/Sundry Notices

VII. Reclamation and Abandonment

A. Reclamation
B. Abandonment
C. List of Operators Found to be in Material Noncompliance
D. Well Conversions

VIII. Variances

ONSHORE OIL AND GAS ORDER NO. 1

Approval of Operations

I. Introduction

A. Authority

This Onshore Order is established pursuant to the authority granted to the Secretaries of the Interior and Agriculture by various Federal and Indian mineral leasing statutes as well as the Federal Onshore Oil and Gas Leasing Reform Act of 1987. The Secretary of the Interior has delegated his authority to the Bureau of Land Management (BLM). It is implemented by the onshore oil and gas operating regulations codified at parts 3150 and 3160 of title 43 of The Code of Federal Regulations. 43 CFR 3164.1 authorizes the Director of BLM to issue Onshore Oil and Gas Orders when necessary to implement and supplement the operating regulations, and provides that all such Orders shall be binding on the operator(s) of Federal and Indian (except the Osage Tribe) oil and gas leases that have been, or are hereafter, issued.

Specific BLM authority for the provisions contained in this Order is found at 43 CFR 3162.5–2 for drilling wells; Section 3162.3–1 for drilling applications and plans; Sections 3162.3–2 and 3162.3–3 for subsequent well operations and other lease operations; Section 3162.3–4 for well abandonment; Section 3162.5 for environmental and safety obligations, and § 3164.3 for surface rights. For leases on Indian lands, the specific authorities are at 25 CFR parts 211, 212, 213, and 227.

The authority for surface disturbing activities on National Forest System (NFS) lands is granted to the Secretary of Agriculture by the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This authority has been delegated to the Forest Service (FS). Its regulatory authority is 36 CFR chapter II, including, but not limited to, part 251, subpart B, and part 261. The responsibility of the FS is limited to approval and administration of surface disturbing activities on NFS lands (36 CFR part 228, subpart E).

B. Purpose

The purpose of this Order is to state the necessary requirements for the approval of all proposed exploratory, development, and service wells, certain subsequent well operations, and abandonment.

C. Scope

This Order is applicable to all Federal and Indian (except the Osage Tribe) oil and gas leases and Indian Mineral Development Act agreements. The requirements in this Order do not relieve an operator from compliance with any applicable Federal, State, or local requirements regarding oil and gas drilling and producing operations and abandonment.

Operators have the responsibility to see that their construction, exploration, development, and production operations are conducted in a manner which (1) conforms with the lease terms, lease stipulations, and Conditions of Approval (COA) for Applications for Permit to Drill or Deepen (APD) and Sundry Notices (SN); (2) provides adequate safeguards for the environments; (3) results in the proper reclamation of disturbed lands; (4) conforms to best available technology and practices; (5) assures that underground sources of usable water will not be contaminated; (6) protects other prospectively valuable minerals; and (7) otherwise assures the protection of the public health and safety.

II. General

a. Definitions

As used in this order the following definitions apply:

Authorized Officer: Any person with the authority to approve or disapprove oil and gas actions on Federal and Indian lands.

Authorized Forest Officer (AFO): Any person with the authority to approve or disapprove surface activities on National Forest System lands.

Blooie Line: A discharge line used in conjunction with a rotating head in drilling operations where air or gas is the circulating medium.

Condition of Approval (COA): A site-specific requirement for operations that is incorporated into an approved APD or Sundry Notice.

Development Well: Any well drilled within the known productive limits of a pool for the purpose of obtaining oil or gas from the producing formation or formations in that field.

Drilling Plan: Documents submitted by an operator as part of an APD package or as a supplement to an approved plan of operations detailing the proposed drilling operations and containing such information as required in 43 CFR 3162.3–1(e).

Exploratory Well: Any well drilled beyond the known productive limits of a pool.

Federal Lands: All lands and minerals owned and administered by the Federal government.

Indian Lands: Lands on or as to which oil and gas leases or other agreements have been approved by the Bureau of Indian Affairs for Indian tribes and/or allottees.

Lease: Any contract or to her agreement issued by the BLM or BIA under the mineral leasing laws providing for exploration for, development of, and/or extraction of oil and gas.

Lessee: A person or entity holding record title in a lease issued or approved by the United States (43 CFR 3160.0–5, and 25 CFR 211.2 and 212.4(a).

National Forest System (NFS) Lands: Federal lands, such as the National Forests and the National Grasslands, administered by the Forest Service.

Operator: Any person or entity, including but not limited to the lessee or operating rights owner, who has acknowledged to the authorized officer, in writing, responsibility under the terms and conditions of the lease for the operations conducted on the leased lands or portions thereof (43 CFR 3160.0–5).

Pre-drill Inspection: An onsite inspection of the proposed drillpad and access road conducted prior to approval of the APD and commencement of construction activities.

Prospectively Valuable Deposits of Minerals: Any deposit of minerals, other than hydrocarbons, determined by the authorized officer to have characteristics of quantity and quality that warrant its protection from oil and gas operations.

Public Lands: Those Federal lands administered by BLM.

Special Use Authorization (SUA): A FS document that authorizes operations on NFS lands outside of the lease, unit, or communization agreement boundary, pursuant to 36 CFR part 211, 251, and 261.

Split Estate: A condition of land ownership where the surface is owned by one party (not Federal) and the subsurface (mineral estate) is owned by the Federal Government and leased under Federal leasing laws.

Surface Disturbing Activities: Any operation which alters (1) natural surface or (2) surface that has been previously reclaimed.

Surface Management Agency (SMA): Any Federal agency having jurisdiction over the surface of Federal or Indian lands.

Surface Use Plan of Operations (SUPO): A document submitted by an operator as part of an APD or a supplement to an approved plan of operations detailing proposed surface occupancy and planned operations pursuant to a Federal or Indian oil and gas lease.

Usable Water: Water containing less than 10,000 parts per million (ppm) total dissolved solids.

Variance: An approved alternative to a provision or standard of this Order.

B. Requirements

Mere reference to compliance with other Onshore Orders will not be sufficient to make an APD or SN technically complete. The operator shall describe or show, as set forth in this Order, the procedures, equipment, and materials to be used in the proposed operations. Neither drilling operations nor construction activities preliminary thereto may be commenced prior to the authorized officer's approval of the permit. Operators shall be held fully accountable for their contractor's and subcontractor's compliance with the requirements of the approved permit and/or plan. Drilling without approval on Federal or Indian lands is a violation under 43 CFR 3163.1(b)(2) and is subject to an immediate daily assessment. Noncompliance with, or alteration or deviation from, an approved APD or SN, without prior approval from the authorized officer or Authorized Forest Officer (AFO), is a violation.

In the event of an extreme emergency, immediate action may be taken without prior approval to safeguard life or prevent significant environmental degradation. Notification of the necessary emergency action taken by the operator shall be provided to the authorized officer as soon as possible, but not later than 24 hours after the action is commenced. If the emergency involves surface resources on SMA lands, the SMA shall also be notified within 24 hours. Upon conclusion of the emergency, the authorized officer or the SMA, where appropriate, will review the incident and determine whether assessments or penalties are warranted.

1. Approval of Form 3160–3. An Application for Permit to Drill or Deepen (APD) is required for each well. In order to be complete, an APD Package shall include all information required under 43 CFR 3162.3–1(d) and (e). A technically and administratively complete APD includes, in addition to Form 3160–3, a Drilling Plan, a Surface Use Plan of Operations (SUPO), evidence of bond coverage, operator certification, and such other information as may be required by applicable Order or Notice to evaluate the proposal. The APD form shall be used for new wells, any well that is a redrill of a permanently abandoned well, and for well deepenings. (Refer to section III.C. for more detailed guidance on completing APDs.) On NFS lands, the Authorized Forest Officer (AFO) is responsible for approving the SUPO of the APD package.

2. Subsequent Well Operations. Proposals for subsequent well operations, except well deepenings, shall be submitted on Form 3160–5, "Sundry Notice and Report on Wells", and approved under the provisions of this Order pursuant to 43 CFR 3162.3–2 or 3162.3–3. Lease operations involving new surface disturbance shall include an amended SUPO submitted with Form 3160–5. A report on all subsequent well operations shall be filed on Form 3160–5, as prescribed in 43 CFR 3162.3–2. A Notice of Intent to Abandon (NIA) a well, a Subsequent Report of Abandonment (SRA), and a Final Abandonment Notice (FAN) shall also be filed on Form 3160–5, as required by 43 CFR 3162.3–4. (Refer to Section VI for additional information.)

3. Office of Filing. All applications for approval under the provisions of this Order shall be submitted to the appropriate authorized officer of the BLM.

4. Compliance with Other Laws and Regulations. This Onshore Order does not exempt the operator from reporting requirements or compliance aspects of other Onshore Orders, Notices to Lessees, etc. An operator's compliance with the requirements of this Order shall not relieve the operator of the obligation to comply with other applicable laws and regulations in accordance with 43 CFR 3162.1(a). Submittal of either the APD or subsequent operations packages and/or forms shall not constitute an application for a variance from the requirements of other Onshore Orders. Requests for variances to any Orders shall be submitted in writing. Approval of proposals submitted under other Orders shall not authorize a variance to provisions of this Order.

C. Modification of Lease Stipulation

An operator may request the BLM/FS/BIA to accept, modify, or waive a lease stipulation. All requests for stipulation changes shall be forwarded in writing to the BLM or BIA. The BLM will forward the requests to the FS or other SMA on Federal leases for decision or recommendation, as applicable. These requests shall be accompanied by technical information that demonstrates that the resource to be protected by the stipulation is not present at the location or is no longer an issue, or that the problem can be mitigated. The modifications shall also be consistent with the planning objectives that prompted inclusion of the lease stipulation. Amendments to BLM Resource Management Plans, Forest Land and Resource Management Plans, or other appropriate agency planning documents may be necessary to accommodate certain requests. All final decisions on Federal leases will be processed through the BLM.

When the review of a requested change in a stipulation or Federal lease term has been completed and a decision has been reached, the operator will be notified in writing by the authorized officer or AFO. Prior to approving a substantial change to the provisions of the lease, the authorized officer or AFO will provide public notification of the proposed modification for at least 30 days, as specified in the Federal Onshore Oil and Gas Leasing Reform Act (Reform Act) of 1987, and III.B. of this Order. This requirement will not be waived or modified. However, this 30-day notification is not required on Indian lands.

D. Rights-of-Way/Special Use Authorization

At the time the APD or Notice of Staking (NOS) package or Sundry Notice is submitted, or during the predrill inspection, the BLM or FS will notify the operator of any additional right-of-way (R/W), Special Use Authorization (SUA), license, or other application needed for support facilities or off-lease access. If another SMA or Indian tribe is involved, the operator will be notified before or during the predrill inspection that the timing or actions or requirements under each permit or license may be different.

On-lease improvements, necessary for operations and production on the lease, do not require a R/W or SUA. These actions will be approved using the APD package or a Sundry Notice with a SUPO amendment. Refer to 43 CFR part 2880 and CFR part 169 for guidance on R/W.

1. *Rights-of-Way (BLM).* For Public lands, the APD package may serve as the supporting documents for the R/W application, in lieu of a R/W plan of development. An NOS will be considered an incomplete R/W application requiring a subsequent APD or a separate R/W application, Standard Form 299 (Application for Transportation and Utility Systems and Facilities on Federal Lands).

Within 10 days of the time an NOS, APD, or other notification is received, the operator will be informed as to what parts of the project will need a R/W, and will be furnished with a cost recovery determination, the proper forms, and supplemental information. This information should be submitted with the APD package if the NOS option has been used. The R/W approval will

be decided within the same time frames allotted for the APD package where possible, as long as the application fee, Form 2800–14, evidence of a bond or a lease rider, and rentals are submitted within 10 days of notification by the BLM.

No surface disturbing activities shall take place on the subject R/W until the associated APD is approved. The holder will adhere to the Conditions of Approval of the APD pertaining to any R/W facilities. Even if an APD is deemed complete, it will not be approved until any necessary R/W applications are also completed for all facilities related to the drilling of the well. The operator will be informed of the rental amount that is due before the R/W is approved. The completed APD and related R/W applications will be approved simultaneously.

2. *Special Use Authorizations (FS).* Applicants for a FS SUA shall identify the lands to be affected and submit an application, using Form FS–2700–3, for the SUA fully describing the proposed uses, improvements, effects on surface resources, and the length of time that the SUA will be needed. The area of land for the SUA will be limited to the minimum needed for the purpose of the authorization. Conditions regulating the use may be imposed to protect the public interest and to ensure compatibility with other NFS programs and activities and to comply with directions provided in the Forest Land and Resources Management Plan. SUAs require payment of the annual fee in advance, commensurate with the fair market value of the rights or privileges authorized, except where authorized otherwise by statute or regulation. Reclamation measures for areas of surface disturbance authorized by the SUA are part of the reclamation plan prepared as part of the SUPO.

E. Appeal Procedures

In accordance with 43 CFR 3165.3, any party adversely affected by a decision of the authorized officer issued under this Order may request an administrative review before the State Director. Any party adversely affected by the decision in the State Director Review may appeal that decision to the Interior Board of Land Appeals as specified in 43 CFR part 4. Complete information concerning the appeal process for BLM actions is contained in 43 CFR part 3165.

Forest Service decisions on consent or approval for use of NFS lands are subject to administrative appeal under 36 CFR parts 217 and 251. Decisions governing plans, projects, and activities to be carried out on NFS lands and that result from analysis, documentation, and other requirements of the National Environmental Policy Act (NEPA) and the National Forest Management Act and the implementing regulations, policy, and procedures are subject to appeal under 36 CFR part 217. These regulations provide for a public notice following these decisions 7 days before activities can be initiated.

The regulations in 36 CFR part 251 govern appeals of written decisions of FS line officers related to issuance, denial, or administration of written instruments to occupy and use NFS lands. A list of the types of written instruments is provided at 36 CFR 251.82 and includes SUAs and SUPOs related to the authorized use and occupancy of a particular site or area.

III. APD Procedures

A. Surveying, Staking, and Inventories

Surveying and staking activities and cultural resource inventories that meet the criteria of casual use, as defined in 43 CFR 3150.0–5(b), and that are in compliance with lease stipulation limitations, may be done on public lands without advance approval from the authorized officer of the BLM. Operators are strongly encouraged to notify the authorized officer prior to entry upon the lands.

Prior notice and approval of entry upon lands administered by the FS or the Department of Defense are required from these agencies for surveying, staking, conduct of cultural resource inventories, and other purposes.

On Indian lands (tribal and allotted), the operator is responsible for making access arrangements with the Bureau of Indian Affairs (BIA) and the affected Indian tribe or allottee prior to entry for surveying, staking, conducting cultural resource inventories, and for other purposes.

Where the surface is privately owned (split-estate), the operator is responsible for making access arrangements with the landowner prior to entry upon the land for the purpose of surveying, staking, and inventories.

Early notification will allow the SMA to apprise the operator of any unusual conditions on the lease, knowledge of which could result in savings of time and money by both industry and the government. These include, but are not limited to:

—Status of LRMP/RMP and management prescriptions;
—Presence of threatened or endangered species and/or habitat;
—Information on the most recent surveys and changes in land ownership or administration;
—Vehicular access restrictions;
—Road conditions, including weather and traffic;
—Other land use activities in the area, including wildlife management, recreation, and timber harvesting.
—Military mission activities and restrictions;
—Known concentrations of significant cultural resources.

Staking of the proposed drill pad shall include: the well location, two 200-foot directional reference stakes, the exterior pad dimensions, reserve pit, cuts and fills, outer limits of the area to be disturbed, and any off-location facilities. Staking is also required for surface disturbances that will result from construction of ancillary facilities. Proposed new roads will require centerline flagging with road stakes being clearly visible from one to the next. In rugged terrain, cut and fill staking and/or slopestaking of proposed new access roads and locations for ancillary facilities may be necessary, as determined by the authorized officer or AFO.

The onsite predrill inspection will not occur until after the proposed pad has been surveyed and staked, and any new access has been flagged.

B. Posting Requirements

In accordance with the Reform Act, no APD on Federal leases may be approved until at least 30 days after public notice is provided. To initiatve this process, the operator shall submit, via the APD or NOS, at a minimum, the company/operator name, well name/number, and the well location to the nearest 40 acre parcel (or a map showing the well site location) to the BLM when a drilling or deepening operation is proposed. This information will be posted as a public notice in the appropriate local office of the BLM and the SMA. The notice will be posted in an area of the office that is readily accessible to the public. This requirement cannot be waived or modified.

Should the proposed location be moved more than 200 meters, reposting of the proposal may be necessary, depending on the significance of the modification determined by the authorized officer or AFO. The purpose of the posted notice is for informational purposes only (43 CFR 3162.3–1), to give any interested party notification that an action is proposed on a Federal lease in a given area. Confidential information will not be posted. Therefore, NOSs, and even APDs with incomplete Drilling Plans or SUPOs, can serve to initiate the 30 days required for posting. BLM will notify any other SMA office having

jurisdiction as soon as possible, to allow the 30-day posting of the information by that office to commence. Notification by telephone, telefax, electronic mail, etc., will be used to aid in this process.

If an operator request, or other circumstance, results in a proposed significant modification to or waiver of lease stipulations before, during, or after the APD approval process is complete, then the proposed lease modification will be re-posted for 30 days. This posting will also serve as a notice of waiver.

The posting requirements outlined above are in addition to any public notice required by other laws.

C. APD Package

All operators wishing to drill, deepen, or re-enter a well shall have an approved APD prior to any surface-disturbing activity. An APD will not be approved until it is technically and administratively complete. A technically and administratively complete APD will contain, at a minimum, a completed Form 3160–3 (Application for Permit to Drill or Deepen), a well plat certified by a registered surveyor, a Drilling Plan, a Surface Use Plan of Operations, evidence of bond coverage, operator certification, and other information that may be required by the authorized officer or AFO.

1. *Drilling Plan.* A Drilling Plan, insufficient detail to permit a complete appraisal of the technical adequacy of, and environmental effects associated with, the proposed project, shall be prepared and submitted with each copy of Form 3160–3. The Drilling Plan shall adhere to the provisions of Onshore Oil and Gas Order No. 2 and, if applicable, Onshore Order No. 6, and shall include the following information:

(1) Names and estimated tops of important geologic formation/marker horizons.

(2) Estimated depths at which the top and bottom of formations potentially containing usable water, oil, gas, or prospectively valuable deposits of other minerals are expected to be encountered, and the operator's plans for protecting such resources.

(3) The operator's minimum specifications for Blowout Preventer (BOP) and related equipment to be used and schematic diagrams thereof showing sizes, pressure ratings, and the testing procedures and testing frequency. BOP and BOP-related equipment (BOPE) schematics shall include schematics of choke manifold equipment. Accumulator systems and remote controls shall be utilized.

(4) The proposed casing program, including size, grade, weight, type of thread and coupling, and the setting depth of each string and its condition (new or acceptably reconditioned). For exploratory wells, or for wells as otherwise specified by the authorized officer, the operator shall include the minimum design factors for tensions, burst, and collapse that are incorporated into the casing design. In cases where tapered casing strings are utilized, the operator shall also include the lengths and/or setting depths of each portion.

(5) The amount and type(s) of cement, including anticipated additives to be used in setting each casing string, shall be described. If stage cementing techniques are to be employed, the setting depth of the stage collars and amount and type of cement, including additives, and preflush amounts to be used in each stage, shall be given. The expected linear fill-up of each cemented string, or each stage when utilizing stage-cementing techniques, shall also be given.

(6) The anticipated characteristics, additives, use, and testing of drilling mud to be employed, along with the types and quantities of mud products to be maintained, shall be given. When air or gas drilling is proposed, the operator shall submit the following specific information:

(a) Length and location of blooie line, including the automatic igniter or continuous pilot light.

(b) Location of compressor equipment, including safety devices, and the distance from the wellbore.

(c) Schematics showing deduster equipment and rotating head.

(d) Amounts, types, and characteristics of stand-by mud and associated circulating equipment.

(7) The anticipated testing, logging, and coring procedures to be used, including drill stem testing procedures, equipment, and safety measures.

(8) The expected bottom-hole pressure and any anticipated abnormal pressures, temperatures or potential hazards that are expected to be encountered, such as lost circulation zones and hydrogen sulfide. The operator's plans for mitigating such hazards shall be discussed. Should the potential to encounter hydrogen sulfide exist, the mitigation procedures shall comply with the provisions of Onshore Oil and Gas Order No. 6.

(9) Any other facets of the proposed operation which the operator wishes for BLM to consider in reviewing the application.

2. *Surface Use Plan of Operations.* The Surface Use Plan of Operations (SUPO) shall contain descriptions of road and drill pad locations, construction methods to be used, and means for containment and disposal of all waste materials. The plan shall provide for safe operations and adequate protection of surface resources and uses, disposal of wastes and any hazardous materials, as well as other environmental components. For Federal and Indian surface, the plan shall also include adequate measures for stabilization and reclamation of disturbed lands no longer needed for drilling or production operations. Where the surface is privately owned, the submission of a surface use agreement and reclamation plan between the operator and land owner will be required in order to evaluate compliance with BLM requirements. Further discussion of activities on private surface is contained in Part IV. For operations proposed on SMA lands, operators shall submit the SUPO to the BLM for forwarding to the SMA. In developing a SUPO, operators should make use of such information as is available from local BLM and/or FS offices, or any other involved SMAs concerning surface resources and uses, environmental considerations, and local reclamation procedures, such as the BLM/FS "Surface Operating Standards for Oil and Gas Exploration and Development" (Gold Book). The SUPO will be reviewed by the BLM, FS, and/or the SMA as appropriate.

In preparing the Surface Use Plan of operations, the operator shall submit maps, plats, and narrative descriptions that include the following (maps shall be of a scale no smaller than 1:24,000, unless otherwise stated below):

(1) *Existing Roads:* A legible map (USGS topographic, county road, Alaska Borough, or other such map), labeled and showing the access route to the location, shall be used for locating the proposed well site in relation to a town, village, or other locatable point, such as a highway or county road. All access roads shall be appropriately labeled. Any plans for improvement and/or maintenance of existing roads shall be provided. All roads shall be improved or maintained in a condition the same as or better than before operations. The information provided for use and construction of roads will also be used by BLM for the required Plan of Development for a R/W application as described in section II.C. of this Order.

Existing roads under the jurisdiction of FS can be used for access if they meet agency standards and transportation objectives. When access involves the use of existing roads, the operator may be required to contribute to road maintenance. Existing multiple use roads may be used by an operator when

approved by the FS. This is usually authorized by a SUA or a joint road use agreement, and an operator will be charged a pro rata share of the costs of road maintenance and improvement, based upon the anticipated use of the road. Existing roads and newly constructed roads under the jurisdiction of any other SMA shall be maintained in accordance with the standards of that agency.

Information required by the following items (2), (3), (4), (5), (6), (8) and (11) of this subsection also may be shown on this map, if appropriately labeled, or on a separate plat or map.

(2) Access Roads to be Constructed or Reconstructed: All permanent and temporary access roads to be constructed or reconstructed in connection with the drilling of the proposed well shall be appropriately identified and submitted on a map or plat. The proposed route to the proposed drill site shall be shown, including distances from the point where the access route exits established roads. All permanent and temporary access roads shall be located and designed to implement the goals of transportation planning and meet applicable standards of the appropriate SMA, and shall be consistent with the needs of the users. Final selection of the rouge location may be accepted by the SMA as early as the predrill inspection or during approval of the APD.

Design standards for a constructed or reconstructed road will be based upon the class or type of road, the safety requirements and traffic characteristics, and the vehicles the road will be expected to carry. Width, maximum grade, crown design, turnouts, drainage and ditch design, location and size of culverts and/or bridges, fence cuts and/or cattleguards, major cuts and fills, source and storage sites of topsoil, and type of surfacing material, if any, shall be described for all construction. In addition, where permafrost exists, the methods for protection from thawing shall be indicated.

(3) Location of Existing Wells: This information shall be submitted on a map or plat, which includes all recorded wells (water, injection, or disposal, producing, or being drilled) within a 1-mile radius of the proposed location.

(4) Location of existing and/or proposed production facilities: For facilities planned either on or off the well pad, a plat or diagram shall be included showing, to the extent known or anticipated, the location of all production facilities and lines to be installed if the well is successfully completed for production. If new construction is planned, the dimensions of the facility layouts are to be shown. This information for off-pad production facilities may be used by BLM for R/W application information as specified in Section II.C. If the information required above is not known and cannot be accurately presented and the well subsequently is completed for production, the operator shall then comply with Section VI of this Order. However, to minimize further site inspections, the operator is strongly encouraged to submit, at the APD stage, a reasonable estimate of the anticipated production setup.

(5) Location of Types of Water Supply: Approval of the APD does not relieve the operator of any Federal, Indian, State, or local requirements for use of water.

Information concerning water supply, such as rivers, creeks, springs, lakes, ponds, and wells, may be shown by quarter-quarter section on a map or plat, or may be described in writing. The source and transportation method for all water to be used in drilling the proposed well shall be noted if the source is located on Federal or Indian lands or if water is to be used from a Federal or Indian project. If the water is obtained from other than Federal or Indian lands, the location and transportation method shall be identified. Any access roads crossing Federal or Indian lands that are needed to haul the water shall be described as provided in paragraphs (1) and (2) of this Section. If a water supply well is to be drilled on the lease, the APD shall so state. The authorized officer of BLM may require the filing of a separate APD of a water well.

(6) *Construction Materials:* The operator shall state the character and intended use of all construction materials, such as sand, gravel, stone, and soil material. If the materials to be used are Federally owned, the proposed source shall be shown either on a quarter-quarter section on a map or plat, or in a written description. The use of materials under BLM jurisdiction is governed by 43 CFR 3610.2–3. The authorized officer of AFO will inform the operator whether the materials are available, and if so, whether they may be used free of charge or a permit for sale is required. If the materials to be used are Indian-owned or under the jurisdiction of any other SMA, the specific tribe, BIA, or the appropriate SMA, according to the site location, shall be contacted by the operator for material disposal procedures.

(7) *Methods for Handling Waste Disposal:* A written description of the methods and locations proposed for safe containment and disposal of each type of waste material (e.g., cuttings, garbage, salts, chemicals, sewage, etc.) that results from the drilling and completion of the proposed well shall be provided. The narrative shall describe the procedures for the eventual disposal of drilling fluids and any produced water, and an accounting of any salable oil, recovered during testing operations. Disposal methods shall comply with Federal laws and appropriate regulations, including the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act. Refer to Onshore Order No. 7 for information concerning the temporary use of reserve pits for disposal of produced water. Procedures for proper handling and disposal of hazardous materials and/or dangerous chemicals shall also be included. The location of any off-site disposal facilities or sites shall be specified.

(8) *Ancillary Facilities:* All ancillary facilities such as camps and airstrips shall be identified on a map or plat. Information as to location, land area required, and methods to be used in construction shall also be provided. The approximate center of proposed camps and the center line of airstrips shall be staked on the ground. If the ancillary facilities are located off-lease, additional authorization will be needed.

(9) *Well Site Layout:* A plat of suitable scale (not less than 1 inch=50 feet) showing the proposed drill pad, reserve pit location, access road entry points, and its approximate location with respect to topographic features, along with cross section diagrams of the drill pad and the reserve pit showing all cuts and fills and the relation to topography. The plat shall also include the approximate proposed location and orientation of the drilling rig, dikes and ditches to be constructed, and topsoil and/or spoil material stockpiles.

(10) *Plans for Reclamation of the Surface:* A proposed interim plan for reclamation/stabilization of the site and also final reclamation plan shall be provided. The interim portion of the plan shall cover areas of the drillpad not needed for production. The final portion of the plan shall cover final abandonment of the well. The plan shall include, as appropriate, configuration of the reshaped topography, drainage systems, segregation of spoil materials, surface manipulations, redistribution of topsoil, soil treatments, revegetation, and any other practices necessary to reclaim all distributed areas, including any access roads and pipelines. An estimate of the time for commencement and completion of reclamation operations, including consideration of

weather conditions and other local uses of the area, shall be provided. Further details for reclamation are contained in Section VII.A. of this Order.

(11) *Surface Ownership:* The surface ownership (Federal, Indian, State, or private) and administration (BLM, FS, BIA, Department of Defense, etc.) at the well location, and of all lands crossed by roads which are to be constructed or upgraded, shall be indicated. Where the surface of the proposed well site is privately owned, the operator shall provide the name, address, and telephone number of the surface owner.

(12) *Other Information:* All other information or requirements that may be specified by the authorized officer and/or AFO shall be included. The operator is also encouraged to submit any additional information that may be helpful in processing the application, including information pertaining to possible delays described in Section III.E.2. below.

3. *Bonding.* The operator shall be covered by a bond in its own name as principal, or by a bond in the name of the lessee or sublessee.

Form 3000–4 (June 1988) covers all bonding needs for oil and gas operations, because it allows for surety bond or personal bond to cover all former requirements of lease bonds, operator bonds, and other types of bonds. If the lessee's or sublessee's bond (either Form 3000–4 or any valid earlier bond forms) is used, a rider (consent of surety or principal shall be furnished to include the operator under the coverage of the bond. The operator on-the-ground shall specify on the APD, Form 3160–3, the type of bond under which the operations are to be conducted.

Operators may be required to submit additional bond coverage for specific APDs. The regulations at 43 CFR 3104.5 and 36 CFR 228.107, or 25 CFR 211.212 for Indian lands, will be used to determine whether an increase in the bond amount is necessary. Other factors that may be considered include location and depth of wells, the total number of wells involved, the age and production capability of the field, and unique environmental issues. Separate bonds may be required for associated R/W's and SUA's.

On Federal leases, operators may ask for a reduction of the amount of a bond, but shall satisfy the terms and conditions in the reclamation plan for that particular operation prior to reduction. In appropriate circumstances, the bond may be reduced by the authorized officer in the amount prescribed by the appropriate SMA. A bond reduction will be based on a calculation of the sum that is sufficient for the remainder of the period of operation authorized by the SUPO.

4. Operator Certification. The name, address, and telephone number of the operator and their field representative shall be included. The operator submitting the APD shall certify as follows:

> I hereby certify that I, or persons under my direct supervision, have inspected the proposed drill site and access route; that I am familiar with the conditions that currently exist; that the statements made in this APD package are, to the best of my knowledge, true and correct; and that the work associated with operations proposed herein will be performed by _____ contractors and subcontractors in conformity with this APD package and the terms and conditions under which it is approved. I also certify responsibility for the operations conducted on that portion of the leased lands associated with this application, with bond coverage being provided under BLM bond #_____. This statement is subject to the provisions of 18 U.S.C. 1001 for the filing of a false statement.
>
> Date _____.
>
> Name and Title _____

D. Notice of Staking Option

Prior to filing a complete APD, the operator may file a Notice of Staking (NOS) with the authorized officer. In Alaska, a copy of the NOS shall also be sent to the appropriate Borough and/or Native Regional or Village Corporation when a subsistence stipulation is part of the lease. Attachment A is a sample NOS form containing the minimum information to be submitted. For Federal lands managed by other SMAs, the BLM will provide a copy of the NOS to the appropriate SMA office.

Surveying and staking of the proposed drill pad and ancillary facilities, and flagging of new or reconstructed access routes, shall be completed prior to the onsite pre-drill inspection. The operator shall incorporate the information gathered at the NOS onsite pre-drill inspection into the APD package. The purpose of the NOS option is to allow the operator the opportunity to incorporate site-specific agency requirements into the APD package, thereby reducing the number of Conditions of Approval (COAs). The NOS shall contain information which will aid in identifying the need for associated R/Ws and SUPs. The operator shall attach a map (e.g., a USGS 7½" Quadrangle) for that portion of the area proposed. The operator shall also include any additional information as specified by the authorized officer and/or the SMA. If all required information is not included, the NOS will be returned to the operator for completion.

E. Processing Schedules

1. *Timetables.* The following tables summarize the important deadlines involved in processing most APD's. The schedules in the regulations at 43 CFR 3162.3–1 apply to a technically and administratively complete APD. If the APD is complete, it should be approved or rejected within 5 business days after the 30-day posting period except for unusual circumstances as outlined in E.2. below. The required information for NOSs and incomplete APDs also will be posted, but BLM may be required to either return the application unapproved or advised the applicant of the reasons why final action may be delayed within the same 30+5 day period (43 CFR 3162.3–1(h)). For operations on NFS lands, the FS is required to provide public notice 7 days before operations can commence. The following schedule itemizes the individual time frames:

a. APD Submitted. i. Public Notification—Begins as soon as the required information is posted in both the approving office and appropriate SMA office (if not BLM), and lasts for 30 days. Posting is not required for actions on Indian minerals.

ii. APD Completeness—Within 10 days of receipt of the APD, BLM will notify the operator as to whether or not the APD is technically and administratively complete, and identify any additional information necessary for the processing of the APD. Within 90 days of the predrill inspection, the APD package is required to be technically and administratively complete, or it will be returned and the entire APD process may have to be repeated.

iii. Pre-drill Inspection—Should be conducted within 15 days of receipt of the APD, assuming the information necessary to hold the inspection has been provided.

iv. Additional Requirements—Approval requirements for incorporation into the APD will be developed on site, or attached to the APD as COAs.

v. Complete Processing—If the APD is technically and administratively complete, it will be approved, or if not it will be returned disapproved, or the applicant advised in writing of any processing or other delay, within 5 business days after the 30-day posting period. For other SMAs not requiring a 30-day posting period, the applicant will be advised of the APD status within 35 days of receipt of a technically and administratively complete APD. However, a technically and administratively complete APD is

required to be filed with the BLM at least 10 business days prior to a decision.

b. NOS Option. i. Public Notification—Begins as soon as the required information is posted in both the approving office and appropriate SMA office (if not BLM), and lasts for 30 days. Posting is not required for actions on Indian minerals.

ii. Pre-drill Inspection—Should be conducted within 15 days of receipt of the NOS, assuming the information necessary to hold the inspection has been provided.

iii. Additional Requirements—Approval requirements for incorporation by the operator into the APD to be submitted will be developed on site at the pre-drill inspection or mailed to the operator within 7 days after the pre-drill inspection.

iv. APD Completeness—Within 10 days of receipt of the APD, BLM will notify the operator as to whether or not the APD is technically and administratively complete, and identify any additional information necessary for the processing of the APD. Within 90 days of the predrill inspection, a technically and administratively complete APD is required to be submitted or the NOS will be returned and the entire NOS/APD process may have to be repeated.

v. Complete Processing—If the APD is technically and administratively complete, it will be approved, or if not it will be returned disapproved, or the applicant advised in writing of any processing or other delay, within 5 business days after the 30-day posting period. For other SMAs not requiring a 30-day posting period, the applicant will be advised of the APD status within 35 days of receipt of a technically and administratively complete APD. However, a technically and administratively complete APD is required to be filed with the BLM at least 10 business days prior to a decision.

2. *Delays.* The above time frames together comprise the total time the BLM anticipates will be required to process the majority of APD's. However, the days of the period may not run consecutively if APD processing is delayed by incomplete or erroneous information in the submitted application. Such delays beyond control of the BLM and/or FS shall not be counted as part of the "30+5 days" allowed in the schedule. However, BLM and the FS will continue to process applications up to the point where missing information or an uncorrected deficiency renders further processing impractical or impossible. Additionally, delays in conducting pre-drill inspections within 15 days of receiving an NOS (or APD if an NOS is not filed) may occur during periods of adverse weather conditions. Processing delays may also occur for unique technical proposals or in areas of high environmental sensitivity, or where jurisdictional conflicts exist. Such areas include, but are not limited to:

(1) Certain individually or tribally owned Indian trust or restricted lands.

(2) Lands withdrawn for Federal reservoirs and Federal lands surrounding such reservoirs.

(3) Lands in formally designated wilderness areas or proposed for such designation, lands within Wilderness Study Areas, or lands within FS Further Planning Areas.

(4) National and State Parks, Wildlife Refuges, Monuments and Recreation Areas.

(5) Areas known to contain threatened or endangered species and/or their critical habitat, or that need additional surveys to delineate critical habitat.

(6) Areas where concern exists with respect to significant cultural/historic resources or where consultation with the State Historic Preservation Officer is necessary.

(7) Certain Federal lands in Alaska.

(8) Lands under jurisdiction of the Department of Defense.

(9) Areas within or near population centers.

(10) Areas subject to particular public concern.

The environmental analysis process may extend the "30+5 day" deadline for some APD's. Where the environmental analysis process results in an environmental impact statement, this schedule will always be exceeded.

The APD is required to be technically and administratively complete not less than 10 business days prior to the end of the "30+5 day" time frame established by regulation. If the APD is not complete within 10 business days prior to the end of this time frame, then additional processing time will be added to the "30+day" time frame. Operators are reminded that if the APD process begins less than 30 days prior to the desired date of commencement of operations, the process cannot be completed within the time desired, such as by the end of the lease term.

Approval of an APD is valid for one year from the date of the authorized officer approval, provided lease expiration does not occur. At the end of this period, the APD will be returned to the operators without prejudice if a well is not drilled, and any initial construction shall be reclaimed if required by the authorized officer or AFO. Should the operator still desire to drill the well, a new APD shall be submitted. Upon written request by the operator, a one-time 90 day extension to this time period may be granted by the authorized officer with concurrence of the appropriate SMA.

F. Environmental Requirements

1. *Pre-drill Inspection.* The pre-drill inspection is to ensure that the staked location (as specified in section III.A.), access roads, and other areas proposed for surface disturbance are acceptable, and that they will comply with all applicable Federal laws and regulations. This inspection should be scheduled and conducted by the BLM or FS within 15 days of receiving the applicant's NOS or APD. The FS will schedule, conduct, and follow up the pre-drill inspection for actions involving NFS lands. Because of the need for close coordination between the SUPO and the drilling plan, the BLM will ordinarily have a representative at pre-drill inspections conducted by FS. Representatives of the appropriate BLM and/or FS office, the operator, any other involved SMA, the appropriate Alaska Borough and/or Native Regional or Village Corporation (when a subsistence stipulation is part of the lease), the operator's dirt contractor and drilling contractor, if known, shall attend the predrill inspection. When private surface is involved, the operator shall furnish the name, address, and telephone number of the surface owner in the NOS submission and in the SUPO. The BLM will invite the surface owner to participate in the pre-drill inspection. If a surface owner or SMA is not able to participate at the desired time, the inspection may be rescheduled. In some circumstances, such as those listed in section III. A. and III.E.2., the BLM or FS may require the filling of a complete APD package prior to scheduling the pre-drill inspection.

Surface use and reclamation requirements will be reviewed, or if necessary, developed. In some cases, the requirements will be incorporated into the APD package at the pre-drill inspection. Otherwise, the requirements will be incorporated as Conditions of Approval to the APD package when approved.

If the NOS option is followed, these requirements will be provided to the operator within 7 days from the date of the pre-drill inspection, to be incorporated by the operator into the complete APD package, when filed. This does not, however, preclude the possibility of additional COA's being imposed as a result of the review of the complete APD package.

In accordance with 43 CFR 3101.1–2, the BLM may require reasonable modifications of a proposal, including, but not limited to, siting and design of facilities, timing of operations, and reclamation measures. Such modifications will not require alteration of the lease terms or stipulations. These usually require additional environmental documentation, provided the modifications do not require relocation of proposed operations by more than 200 meters of rescheduling by more than 60 days in a lease year, or require operations to be sited off the leasehold, or prohibit new surface disturbing operations. Should it be necessary to exceed the 200 meter/60 day standards, additional environmental analysis will be required. Requirements for compliance with nondiscretionary statutes may require modifications beyond these limits.

For operations on NFS lands, FS review of a SUPO at the pre-drill inspection will include development and inclusion of COAs necessary for conducting operations. For operations on Indian lands, the BIA will furnish COAs to the BLM. Within 7 days of the pre-drill inspection, the AFO will notify the operator and the appropriate BLM office in writing that the proposed SUPO is (1) approved as submitted, (2) approved subject to specific operating conditions, or (3) unapproved for the reasons stated. Any resubmissions of disapproved applications shall be forwarded by the operator through the BLM.

2. *Federal Responsibilities.* The information obtained during a pre-drill inspection will be utilized by the BLM/FS to identify the reasonably foreseeable environmental consequences of the proposed action and to prepare the required environmental document. Except for NFS lands, the BLM has the lead responsibility for completing the environmental review process, including cultural resource surveys and threatened and endangered species requirements, identification of other environmental concerns and known or potential surface geological hazards, and establishing the terms and conditions under which the APD package and associated R/W may be approved. For proposed actions on NFS lands, FS has the lead responsibility for compliance with environmental requirements and approval of the SUPO. In these cases, the BLM will be a cooperating agency under the provisions found at 40 CFR parts 1500 through 1508.

3. *Operator Responsibilities.* The operator shall conduct operations to minimize adverse effects to surface and subsurface resources and shall prevent unnecessary or unreasonable amounts of surface disturbance. Operators shall comply with the provisions of the approved APD and other requirements, including laws, regulations, and the following:

a. Cultural and Historic Resources. Cultural resource surveys shall be conducted prior to commencement of ground disturbing activities. The operator shall inform all personnel in the area associated with the project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator shall immediately stop work that might further disturb such materials, and contact the BLM and, if appropriate, the FS or other SMA. BLM or FS will inform the operator within 5 working days at to whether the materials appear eligible for the National Register of Historic Places. If the materials appear eligible, the BLM or FS will provide the mitigation measures the operator will likely be required to undertake before the site can be used and initiate a review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the BLM or FS findings are correct and the mitigation is appropriate.

If at any time the operator wishes to relocate activities on lease to avoid the expense of mitigation and/or the delays associated with the process, the BLM, FS, or appropriate SMA will assume responsibility for whatever recordation and stabilization of the exposed cultural material may be required. Otherwise, the operator shall be responsible for mitigation and stabilization costs. The BLM, FS, or appropriate SMA will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the BLM or FS that the required mitigation has been completed, the operator will then be allowed to resume construction. Relocation of activities may subject the proposal to additional environmental review.

For activities on lands administered by other SMAs, procedures for preservation, recordation and/or avoidance of cultural resources discovered during construction shall be followed, according to appropriate SMA guidelines.

b. Endangered Species Act. The operator shall conduct all operations to avoid jeopardizing protected fisheries, wildlife, plants, and their habitats in compliance with the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.), and its implementing regulations (50 CFR part 402).

c. Watershed Protection. The operator shall not conduct operations in areas subject to mass soil movement, riparian areas, floodplains, lakeshores, and/or wetlands, except as otherwise provided in an approved SUPO. The operator shall also take measures to minimize or prevent erosion and sediment production. Such measures may include, but are not limited to, siting of structures, facilities, and other improvements to avoid steep slopes and excessive land clearing, and temporary suspension of operations when frozen ground, thawing, or other weather-related conditions warrant.

d. Safety Measures and Hazardous Materials. The operator shall maintain structures, facilities, improvements, and equipment is a safe manner in accordance with the approved APD, and also take appropriate measures, as specified in applicable laws, regulations, Orders, and Notices to Lessees, to protect the public from any hazardous material sites or conditions resulting from operations. Such measures include, but are not limited to, obtaining appropriate Federal and/or State permits, proper disposal, posting signs, building fences, or otherwise identifying the hazardous site or condition and preventing public access or exposure. The operator is encouraged to avoid using hazardous substances during operations. Releases of reportable quantities of hazardous substances, as specified in 40 CFR 302.4, shall be reported to the BLM, appropriate SMA if applicable, and the National Response Center (800–424-8802).

e. Environmental Information. The operator may be required to provide additional information regarding the proposed operation in order for the authorized officer or AFO, as appropriate, to assess the environmental effects.

IV. Split Estate (Private Surface/Federal Minerals or Private Surface/Indian Minerals)

No surface disturbing activity shall commence without an approved APD, or it will be considered a violation subject to 43 CFR 3162.3–1(c). When authorizing lease operations on private surface/Federal minerals and on private surface/Indian minerals, the BLM will ensure operator compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and

related Federal statutes. For split estate lands within NFS administrative boundaries, the FS and BLM have joint responsibilities unless precluded by local agreements. In order to carry out these varied responsibilities, the BLM and FS may enter onto the leasehold for inspection and monitoring purposes. For any split estate situation involving Indian lands, refer to section V.

A Surface Owner Agreement (SOA) between the operator and the surface owner shall be submitted to the authorized officer or AFO in accordance with local agreements. The SOA shall contain a surface use agreement providing for protection of the environment and/or mitigation of impacts, and shall include a reclamation plan. If the operator and surface owner are unable to reach an agreement concerning surface protection and reclamation, the BLM or FS will provide appropriate requirements.

A. Environmental Protection of Resources

The BLM and/or FS will conduct an environmental analysis of the proposed action, using the agreement between the operator and the surface owner as the basis for mitigation. If the BLM or FS determines that the operations will cause unacceptable environmental impacts, the operator will be required to comply with additional mitigating measures to reduce environmental impacts to an acceptable level.

The BLM and/or FS will ensure compliance with section 106 of the NHPA for the area involved in the application. If approval from the surface owner cannot be obtained to enter the land for a survey, it may be necessary as a last resort for the BLM, the operator, or both to obtain a court order to be allowed access to perform the necessary survey.

Under the ESA, operations on split estate lands constitute Federal actions. As such, the requirements and procedures of the ESA apply to split estate lands as they do to Federal lands, including, as appropriate, preparation of biological assessments and conduct of consultations. If the surface owner refuses access to the lands, the BLM and/or FS will review existing records and inventories of the general area to determine if the lands are in an area that normally contains habitat for threatened and endangered species. If the review indicates that no habitat is present, the permit may be approved as to this resource.

If it is necessary to enter onto private surface to comply with the ESA, every effort will be made to obtain the surface owner's cooperation. If these efforts are not successful, an order from the district court may be necessary for entry. Section 7 consultation with the U.S. Fish and Wildlife Service may also be appropriate, based on the biological assessment. BLM will incorporate mitigation into the APD approval that will protect threatened and endangered species and habitat. The APD package will not be approved until all ESA requirements have been met. The surface use agreement and reclamation plan, contained in the required SOA, will be reviewed by BLM or FS to determine the environmental protection afforded and adequacy of the reclamation plan. If it is determined that additional protection is necessary and/or the reclamation plan is inadequate, additional mitigation measures will be required by the BLM or FS.

In the event that an agreement cannot be reached between the surface owner and the operator, the authorized officer may approve the permit if (1) the operator certifies that a good faith effort has been made to reach an agreement with the surface owner, (2) adequate bonding has been posted to pay for required reclamation, and (3) there is no legal obstacle to conducting operations in the absence of surface owner consent. The SUPO and the APD's Conditions of Approval will provide the reclamation requirements.

B. Bonding

Oil and gas operators may either obtain consent from surface owners or enter into an agreement with them to provide for surface owner compensation. If a good faith effort to accomplish these options has been made, but the options are not possible, the operator shall post, in accordance with 43 CFR parts 3813 or 3814, a bond sufficient to cover destruction of surface improvements, tangible crops, and environmental damages. BLM will establish the amount of this bond, taking into consideration the surface owner's needs. In most cases, the lease bond submitted in accordance with 43 CFR part 3104 will be sufficient to meet these requirements. If it appears to the authorized officer that the minimum coverage required for operations on a Federal oil and gas lease or an Indian lease or agreement under a lease bond is not adequate to protect the surface owner improvements or the local environment, the bond amount may be increased.

The procedures for termination of the period of liability of a bond are the same regardless of whether the surface ownership is Federal or private. Where private surface is involved, the authorized officer will contact the surface owner to determine what arrangements were made by the operator, and any objections or problems the surface owner may have. The operator is required to satisfy the terms and conditions of the lease, regardless of any arrangements made with the surface owner.

V. Indian Oil and Gas Leases

A. Approval of Operations

BLM will normally process APDs and Sundry Notices on Indian tribal and allotted oil and gas leases and Indian Mineral Development Act agreements in a manner similar to Federal leases. However, the processing procedures, including environmental and archaeological clearance procedures, may vary between reservations. For the purpose of processing such applications, the Bureau of Indian Affairs (BIA) and/or Tribe are considered the SMA. Operators are responsible for obtaining any special use or access permits from appropriate BIA and Tribal offices, if Tribal lands are involved. Unlike Federal leases, posting for public notification of APD's is not required on Indian leases.

B. Surface Use

Where the wellsite and/or access road are proposed on surface held in trust for an Indian tribe or for an individual Indian, the operator is responsible for reaching a surface use agreement with the Indian tribe or individual Indian and the BIA. This agreement is required to specify the requirements for protection of surface resources, mitigation requirements, and requirements for reclamation of disturbed areas. The BIA, the Tribe, and BLM will develop the COAs.

VI. Subsequent Operations/Sundry Notices

Subsequent operations shall be conducted in accordance with 43 CFR part 3160. However, where the proposed subsequent operation will result in the well being converted for injection purposes (disposal or production enhancement), operators shall obtain an Underground Injection Control permit from EPA, or from the State where the State has achieved primacy. Any information submitted in support of obtaining that permit shall be accepted by the authorized officer to the extent that it satisfies the information submittal requirements of this Order.

Within 30 days after initial completion, the operator shall file a copy of a Well Completion or Recompletion Report, Form 3160–4, along with a copy of all well logs, with

the authorized officer. Pursuant to 43 CFR 3162.3–2, a proposal for additional well operations shall be submitted by the operator on a Sundry Notice, Form 3160–5, to the authorized officer for approval prior to commencing the following: Casing repairs, nonroutine fracturing jobs, recompletion in a different interval, water shut-off, commingling production between intervals, and/or conversion to injection. A Notice of Intent on Form 3160–5 is valid for 90 days. If additional surface disturbance is involved, the proposal shall include an amendment to the SUPO. For lands under the jurisdiction of FS, this amended SUPO will require their approval. Additional environmental review may be required by SMAs for an amendment to the SUPO and for certain Sundry Notices involving additional surface disturbance. The authorized officer may prescribe that each proposal contain all or a portion of the information as set forth in 43 CFR 3162.3–1. Within 30 days of the completion of such operations, a subsequent report shall be filed on Form 3160–5, and if the well is recompleted, a recompletion report shall be filed on Form 3160–4. Additionally, if a plat showing the production facility layout was not provided at the APD stage, as required by Section III.C.2., the information is now required to be submitted for approval.

Routine fracturing jobs, acidizing jobs, or recompletions in the same interval will not require prior approval by the authorized officer, unless additional surface disturbance is involved, and/or if the operations do not conform to the standard of prudent operation practice. However, a subsequent report on these operations is required to be filed within 30 days of completion on Form 3160–5. No prior approval or subsequent report is required for well cleanout work, routine well maintenance, or bottom-hole pressure surveys. The modification of any production, treating, and/or measurement facilities shall require submission of a revised schematic diagram within 60 days pursuant to Onshore Order No. 3.

VII. Reclamation and Abandonment

A. Reclamation

The surface reclamation plan will be a part of the SUPO, as specified in paragraph 10 of section III.C.2., and will be designed to return the disturbed area to productive use to meet the objectives of the land and resource management plan. The operator shall commence and complete reclamation as soon as possible. Dirtwork shall be completed within one year of completion of drilling/testing or plugging, and revegetation shall be completed within the time period specified by the authorized officer or AFO. Unless otherwise provided for in an approved SUPO, reclamation shall be conducted concurrently with other operations. The operator may request the authorized officer or AFO, as appropriate, to approve a reduction in the amount of an individual lease bond, if partial reclamation of the site has been completed to the satisfaction of the SMA.

All pits and pads shall be reclaimed to a satisfactorily revegetated safe and stable condition. Pits containing fluid shall not be breached (cut) or filled (squeezed). The use of chemicals to aid in fluid evaporation, stabilization, or solidification shall have prior approval. Pit fluids or other contents, removed offsite, shall be disposed of in accordance with appropriate local, State, or Federal requirements. Pits shall be dry or solidified prior to backfilling. Synthetic pit liners shall be removed or otherwise disposed of as directed by the authorized officer or AFO.

B. Abandonment

No well plugging and abandonment operations shall be commenced without the prior written approval of the authorized officer. In the case of newly drilled dry holes or failures and in emergency situations, oral approval for plugging may be obtained from the authorized officer, subject to prompt written confirmation. for old wells not having an approved abandonment plan, a sketch showing the disturbed area and roads to be abandoned, along with the proposed reclamation measures in accordance with Section VII.A. of this Order, shall be submitted with Form 3160–5. On Federal and Indian surface, the appropriate SMA may request additional reclamation measures at abandonment, which shall be made part of BLM's approval of the abandonment.

1. NIA/SRA/FAN. Prior to commencing well abandonment operations, the operator shall submit a Notice of Intent to Abandon (NIA) on Form 3160–5, in accordance with the requirements of 43 CFR 3162.3–4, for approval by the authorized officer. Within 30 days following completion of well abandonment procedures, the lessee or operator shall file with BLM a Subsequent Report of Abandonment (SRA), also on Form 3160–5. Upon completion of reclamation operations, the operator shall notify the authorized officer when the location is ready for inspection via an additional Form 3160–5, Final Abandonment Notice (FAN). For wells involving other SMAs, a copy of the NIA/SRA/FAN shall be forwarded to the appropriate SMA office by the BLM. Final abandonment shall not be approved until the surface reclamation work required by the approved drilling permit or approved abandonment notice has been completed to the satisfaction of the involved SMA. The operator may request the authorized officer or AFO to approve a reduction in the amount of an individual lease bond following partial reclamation. On Indian lands, abandonment of a well may not be approved if a tribe determines to take over the operation of the well rather than have the well abandoned. Negotiation for transfer of ownership will be necessary and the operator will be relieved of any further obligations for the well.

2. Onshore Orders No. 2 and 8. Onshore Oil and Gas Order Number 2 specifically addresses drilling abandonment requirements, while Onshore Oil and Gas Order Number 8 addresses abandonments of depleted wells. Both orders establish minimum standards for abandonment involving both cased hole and open hole completions, including lengths, locations, and quality of cement plugs, surface caps, and mud to be used between plugs. The minimum standards of Orders 2 and 8 will be applicable. Approval of abandonment operations pursuant to this Order shall not constitute a variance from Orders 2 and 8.

C. List of Operators Found to be in Material Noncompliance

Operations shall be conducted in accordance with the lease and its stipulations, an approved SUPO, and all applicable Federal regulations. When an operator fails or refuses to comply with a reclamation requirement or other standard included in a lease, the operator will be notified in writing and given an opportunity to correct the noncompliance or take other action to reach an agreement with the authorized officer and/or AFO to remedy the noncompliance. When an operator does not correct or take other action to remedy the noncompliance, the procedures found at 43 CFR 3102.5–1(f) and 36 CFR 228.113–.114, will be applied. A list of operators found to be in material noncompliance with reclamation requirements and other standards will be compiled and maintained by the BLM and the FS. Operators who have been so identified will not be eligible to obtain Federal oil and gas leases in the future, until they have complied with the reclamation requirement or other standard involved.

Such operators may also be subject to other penalties as prescribed by Federal statutes or regulations.

D. Well Conversions

When subsequent operations will result in a well being converted for disposal or injection purposes on lease, the operator shall file a Notice of Intent to Convert to Injection on Form 3160–5 with the appropriate BLM or FS office (see Onshore Oil and Gas Order No. 7). Pursuant to part VI.A of this Order, operators shall also obtain an Underground Injection Control permit from EPA, or from the State, in cases where it has achieved primacy. A copy of all supporting data, including that submitted to the EPA, Indian tribe, or State, shall be attached to Form 3160–5. BLM will review the information to insure its technical and administrative accuracy. The authorized officer will either approve, approve with modifications, or disapprove the application based on the results of such review.

Where conversion operations involve waste water disposal wells which are used for more than one lease or for off-lease fluids, the operator shall file an application for a R/W or SUP with the appropriate SMA office. If the disposal well is located on a Federal oil and gas lease, the operator may attach a rider to an existing oil and gas lease bond. Disposal wells not covered by an existing bond or rider require separate bonds.

The complete abandonment of a well shall not be approved if the SMA or surface owner commits to acquiring the well for water use purposes. Conditions under which this may occur include:

(1) The well was drilled as a water supply source in support of exploration, development, and producing operations and is no longer needed by the operator;

(2) The well encountered usable water but was unsuccessful in discovering commercial quantities of oil and/or gas and is to be plugged and abandoned; or,

(3) The well encountered usable water and is to be plugged and abandoned because it is no longer capable of producing oil or gas in commercial quantities.

In these cases, the SMA or surface owner shall inform the appropriate BLM office of its decision prior to approval of the APD if possible. The operator shall abandon the well from the bottom hole to the base of the deepest usable water zone of interest, as required by the authorized officer, and shall complete the surface cleanup and reclamation, as required by the approved APD or approved NIA immediately upon completion of conversion operations. The SMA or surface owner shall reach agreement with the operator as to the satisfactory completion of reclamation operations. The authorized officer's subsequent approval of the partial abandonment fully relieves the operator of further obligation. When an SMA desires to acquire the well, that agency will take over responsibility for all monitoring, testing, and other actions necessary to ensure that the water quality of the well is in compliance with relevant regulations and laws.

VIII. Variances

An operator may request the authorized officer or AFO to approve a variance from any of the provisions and/or minimum standards in this or other Orders. All such requests shall be submitted in writing to the authorized officer or AFO and shall be accompanied by information as to the circumstances which warrant approval of the variance. The request should also indicate how the proposed alternative will satisfy the related provisions/standards of the corresponding Order. After any necessary concurrence or approval of the SMA, the authorized officer may approve the requested variance, if it is determined that the proposed alternative meets or exceeds the objectives of the applicable provisions/standards, the variance does not conflict with statutory or regulatory requirements, and, where necessary, the public is given notification of the variance.

Requests for variance may be oral in emergency or other situations of an immediate nature that could not be reasonably foreseen, either at the time of subsequent operation approval or during routine subsequent operations. However, such requests shall be followed by a written notice filed not later than 7 days following the oral request. Variances in such situations may be approved orally, with confirmation in writing within a reasonable time.

Attachment A

SAMPLE FORMAT

Notice of Staking
(Not to be used in place of Application for Permit to Drill Form 3160–3)

1. Oil Well ☐
   Gas Well ☐
   Other (Specify)
2. Name, Address & Phone No. of Operator.
3. Name & Phone No. of Specific Contact Person:
4. Surface Location of Well:
   Attach:

SAMPLE FORMAT—Continued

   (a) Sketch showing road entry onto pad, pad dimensions, and reserve pit.
   (b) Topographical or other acceptable map showing location, access road, and lease boundaries.
5. Lease Number.
6. If Indian, Allotee or Tribe Name.
7. Unit Agreement Name.
8. Well Name and No.
9. API Well No.
10. Field Name or Wildcat.
11. Sec., T., R., M., or Blk and Survey or Area.
12. County, Parish or Borough.
13. State.
14. Name and depth of Formation Objective(s)
15. Estimated Well Depth
16. Additional Information (as appropriate; shall include surface owner's name, address and, if known, telephone number)
17. Signed _____
    Title _____
    Date _____

Note: Upon receipt of this Notice, the Bureau of Land Management (BLM) will schedule the date of the on site predrill inspection and notify you accordingly. The location must be staked and access road must be flagged prior to the onsite. Operators must consider the following prior to the onsite:

(a) H_2S Potential.
(b) Cultural Resources (Archeology).
(c) Federal Right of Way or Special Use Permit.

[FR Doc. 92–17336 Filed 7–22–92; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 91–12]

Federal Acquisition Regulation; Precontract Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are withdrawing the proposed Federal Acquisition Regulation (FAR) rule regarding precontract costs published for public comment in the **Federal Register** on April 8, 1991 (56 FR 14302).

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in

reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–12.

SUPPLEMENTARY INFORMATION: Precontract costs are currently allowable under FAR 31.205–32 if they are incurred directly pursuant to the negotiation of the contract and in anticipation of award, they are necessary to meet the proposed delivery schedule, and they would have been allowable if incurred after the date of the contract. The Defense Management Review (DMR) uncovered numerous supplemental clauses being used by Service components to impose additional limitations on the allowability of precontract costs. The DMR Task Force recommended development of a standard clause for use by all Federal agencies.

As a result, a proposed rule was published in the **Federal Register** on April 8, 1991 (56 FR 14302), which would have amended the cost principle at FAR 31.205–32, Precontract costs, to require that such costs must be authorized using a new contract clause to be allowable. However, after careful consideration of the public comments received, a determination was made that the proposed rule is unnecessary because the current FAR provisions at 31.109 and 31.205–32 adequately address the issue of precontract costs. Accordingly, the proposed rule is being withdrawn.

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: July 15, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 92–17312 Filed 7–22–92; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 223 and 252

Defense Federal Acquisition; Regulation Supplement; Drug-Free Work Force

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Defense is proposing revisions of its Defense Federal Acquisition Regulation Supplement interim rule for Drug-Free Work Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 21, 1992 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mrs. Linda W. Neilson, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–083 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Linda W. Neilson, Procurement Analyst, DAR Council, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule was published in the **Federal Register** on September 28, 1988 (53 FR 37763) to state DoD policy on a drug-free work force, and to provide a contract clause for use in solicitations and contacts meeting certain criteria. Sixty-three comments were received from thirty-five respondents to the rule. After review of the public comments, and internal coordination, the rule was finalized on November 27, 1991 (56 FR 60066). Subsequently, a question was raised as to whether the public was given adequate opportunity to express and have its views considered in the development of the final rule because the final rule was a significant departure from the interim rule. Consequently, elsewhere in this issue of the **Federal Register**, the final rule of November 27, 1991 is removed, the interim rule is reinstated, and the removed language is published here as a proposed rule with a request for comments.

B. Regulatory Flexibility Act

The proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the rule requires contractors to institute and maintain a program for achieving the objective of a drug-free work force. A final regulatory flexibility analysis was prepared when this language was originally published as a final rule in November, 1991 (56 FR 60066). We have subsequently revised the analysis to reflect updated information. The revised regulatory flexibility analysis is summarized as follows. The proposed rule will apply to all businesses, large and small, with DoD contracts (above the small purchase limitation in FAR part 13) that require contractor employees to perform in sensitive positions. Under such contracts, contractors will be required to: (a) Institute and maintain a program for achieving a drug-free work force; (b) Provide, in conformance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs", for random drug testing of contractor employees working in sensitive positions; and (c) Obtain contracting officer approval prior to allowing employees to return to sensitive positions following violation of defense drug policy or a criminal drug statute. A copy of the revised Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the revised Regulatory Flexibility Analysis may be obtained from Mrs. Linda W. Nielson, Defense Acquisition Regulations System, 3062 Defense Pentagon, Washington, DC. Comments are invited. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR case 88–083 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the proposed rule imposes reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* OMB approval was granted on March 2, 1992 under OMB Control Number 0704–0336.

Subsequently, OMB approval for a revision to Control Number 0704–0336 was requested. The request for public comment on the revision was published in the **Federal Register** July 8, 1992 (57 FR 30203).

List of Subjects in 48 CFR Parts 223 and 252

Government procurement.

Claudia L. Naugle,

Executive Director, Defense Acquisition Regulations System.

Therefore, it is proposed that 48 CFR parts 223 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 223 and 252, continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, and Defense FAR Supplement 201.301.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

2. Subpart 223.5, consisting of sections 223.570 through 223.570–3, is revised to read as follows:

Subpart 223.5—Drug Free Workplace

Sec.

223.570 Drug-free work force.

223.570–1 Policy.

The unlawful use by contractor employees of controlled substances threatens national security and the safety of personnel and equipment. Therefore, DoD policy is to ensure that DoD contractors have a program for eliminating the unlawful use of controlled substances by employees whose duties affect health, safety, national security, or accomplishment of the DoD mission.

223.570–2 Definitions.

As used in this section—

"Controlled substance" and "employee" are as defined in FAR 23.503. "Employee in a sensitive position" is as defined in the clause at 252.223–7004, Drug-Free Work Force.

223.570–3 Contract clause.

(a) Use the clause at 252.223–7004, Drug-Free Work Force, in all solicitations and contracts that require contractor employees to perform in sensitive positions.

(b) Do not use the clause in solicitations and contracts—

(1) Below the small purchase limitation in FAR part 13;

(2) For performance or partial performance (but only to the extent of the partial performance) outside the United States, its territories, and its possessions, unless the contracting officer determines inclusion to be in the best interest of the Government; or

(3) For law enforcement agencies when the head of such agency or designee determines that application of the requirements of this section would be detrimental to the law enforcement agency's undercover operations.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.223–7004 is revised to read as follows:

252.223–7004 Drug-Free Work Force.

As prescribed in 223.570–3, use the following clause:

Drug-Free Work Force (XXX 1992)

(a) *Definitions.* As used in this clause—

(1) *Controlled substance, employee, and criminal drug statute* have the meanings given in the Drug-Free Workplace clause of this contract.

(2) *Employee in a sensitive position* means an employee whose duties could reasonably be expected to affect health, safety, or national security, including, but not limited to, duties involving—

(i) Access to classified information;

(ii) Possession or use of firearms;

(iii) Design, manufacture, test and evaluation, or maintenance of aircraft, vessels, vehicles, heavy equipment, munitions, toxic materials, weapons, weapons systems, potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences), or major components of the foregoing which are directly contracted for by the Department of Defense;

(iv) Control, operation or use of aircraft, vessels, vehicles, heavy equipment, toxic or nuclear materials, munitions, weapons, weapon systems, or potentially dangerous equipment/materials/or applications (such as lasers, explosives, unstable chemicals, or medical equipment with potentially life threatening consequences);

(v) Transportation, storage, or protection of toxic or nuclear materials, or munitions, or potentially dangerous materials (such as explosives or unstable chemicals);

(vi) Direct treatment or rehabilitation of employees for unlawful use or abuse of controlled substances; or

(vii) Air traffic control.

(b) The Contractor shall institute and maintain a program for achieving a drug-free work force. As a minimum, the program shall provide for the random drug testing of Contractor employees working in sensitive positions. The Contractor's drug testing program shall conform to the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" published by the Department of Health and Human Services (53 FR 11970), April 11, 1988.

(c) The Contractor shall not permit an employee to work in a sensitive position in the performance of a Department of Defense contract if—

(1) The employee tests positive for the use of a controlled substance during a test pursuant to this clause or a test based on reasonable suspicion of drug use; and

(2) The use is determined to be unlawful; or

(3) The employee is convicted of violating a criminal drug statute.

(d) The Contractor may permit an employee covered by paragraph (c) of this clause to work in a sensitive position on a Department of Defense contract only—

(1) With the approval of the Contracting Officer; and

(2) After the employee has successfully completed a supervised rehabilitation program.

(e) The requirements of this clause take precedence over any State and local laws to the contrary.

(End of clause)

[FR Doc. 92–17313 Filed 7–22–92; 8:45 am]
BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-113-1]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7612. For copies of the environmental assessment and finding of no significant impact, write to Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of a no significant impact, which is based on data submitted by the applicant and on a review of other relevant literature, provides the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

An environmental assessment and finding of no significant impact has been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-106-01	Calgene, Incorporated	06-25-92	Cotton plants genetically engineered to express a nitri-lase enzyme for tolerance to the herbicide bromoxynil.	Maricopa County, Arizona; Darlington County, South Carolina.

The environmental assessment and finding of no significant impact has been prepared in accordance with: (1) the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 20th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17417 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92-110-1]

Veterinary Services Programmatic Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service intends to utilize its in-house resources to prepare a

programmatic environmental impact statement (EIS) for the Veterinary Services Program. We will be studying the disease prevention, surveillance, and control activities of the Veterinary Services Program in order to identify any potential environmental effects. The preparation of the EIS will give us an opportunity to explore alternative means of dealing with any identified problem areas and enable us to establish a flexible framework for handling site-specific issues. In the near future, a notice of proposed scope of study will be published in the **Federal Register** for public comment.

FOR FURTHER INFORMATION CONTACT: Jack Edmundson or Nancy Sweeney, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8565.

SUPPLEMENTARY INFORMATION: The Veterinary Services Program of the Animal and Plant Health Inspection Service (APHIS) deals with the prevention, surveillance, and control of certain animal diseases. Its prevention activities are designed to prevent the introduction or interstate spread of animal diseases. Its surveillance activities are designed to detect new disease outbreaks as soon as possible and collect data to determine the incidence and prevalence of certain diseases and disease conditions. Control activities include all activities designed to reduce the number of diseased animals and prevent the spread of certain diseases.

In order for us to identify the potential environmental effects of these prevention, surveillance, and control activities, APHIS will be using its inhouse resources to prepare an environmental impact statement (EIS). The preparation of the EIS will give us an opportunity to explore alternative means of dealing with any identified problem areas and enable us to establish a flexible framework for handling site-specific issues.

The EIS will be prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) ALPHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

In the near future, a proposed scope of study will be published in the **Federal Register** for comment. Following the comment period, a notice of final scope, reflecting, as appropriate, views and opinions submitted for consideration, will be published in the **Federal Register**. Any additional opportunities for public participation will be announced in the **Federal Register**.

Done in Washington, DC, this 20th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–17418 Filed 7–22–92; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 92–114–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of these documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92–176–01	Monsanto Agricultural Company.	06–24–92	Tomato plants genetically engineered to express a heterologus aminocyclo-propane-1-carboxylic acid (ACC) degradation gene, to delay ripening.	Yolo County, California; Jersey County, Illinois.
92–182–01 renewal of permit 91–151–01, issued on 09–24–91.	Upjohn Company	06–30–92	Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Isabela, Puerto Rico.

Done in Washington, DC, this 20th day of July 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-17416 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Sierraville District Insect Salvage Timber Sales Environmental Assessment, Supplement 2, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The environmental analysis for this decision will be documented in the Sierraville District Salvage Sale Environmental Assessment, Supplement 2. The project objectives are to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected area. The current Sierraville District Insect Salvage Timber Sale Environmental Assessment is being supplemented to include new salvage areas located mostly on the eastside of the Ranger District. This area is in a southeasterly and easterly direction from the small rural community of Sierraville, California.

There are higher than normal levels of tree mortality occurring on the eastside of the Sierra Nevadas on the Tahoe National Forest due to six years of below-normal precipitation. The greatest effect of the drought has been reduced vigor and weakening of the natural defense mechanisms of over-stocked, young sawtimber stands and older, mature trees, which predisposes them to bark beetle attack. White fir makes up between 25 to 40 percent of the present timber stands and is experiencing the greatest mortality. This white fir is within the Eastside Pine and Mixed Conifer Forest Types located between approximately 6,200 feet and 7,200 feet elevation. The rapid rate of deterioration of true fir requires that it be removed as soon as possible if the timber is to be used, its value recovered and the fire hazard reduced.

The District Ranger determined through preliminary environmental analysis including public scoping, that there is good cause to expedite this project. Signs of mortality are visible on approximately 3,500 acres of the analysis area. It is estimated there may be 50 percent or more of the trees in some stands which are dead or dying. The analysis is proposing six to eight sales in 1992 using both tractor and helicopter harvest systems. It is estimated that up to 10 million board feet could be salvaged from this analysis area. The proposal to salvage in the project area is consistent with the direction provided in the Tahoe National Forest Land and Resources Management Plan, approved by the Regional Forester on June 14, 1990, which includes intensive management practices on commercial Forest lands.

There will be an estimated 2.4 miles of new road construction and 4.1 miles of reconstruction. The newly constructed roads will be low standard, 299 construction-type roads which fit the contours are low cost, and provide adequate drainage to minimize erosion.

Spotted owl surveys have been conducted using the current Regional owl-calling protocol in areas considered to be potential California spotted owl habitat. No owls have been detected.

The salvage proposal does not include any harvest within Spotted Owl Habitat Areas. Most of the acres being treated are within the Eastside Pine Type which were heavily logged at the turn of the century and are now young over-stocked stands of timber. It is estimated that there is less than 100 acres that might be considered old-growth within the proposed sale areas. Where stands of old trees, which may it the old-growth definition are found, they will be avoided.

Regional entomologists have visited the area and have stated that with the current drought conditions, the over-stocked stands and the numerous acres involved, there is no economical or practical means to control the insect epidemic. Although salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is important to remove the dead and dying timber before it deteriorates and causes a value loss. Through timber sales, fuels can be treated (or deposits collected to treat it) to a degree that could not be funded otherwise. It is important to harvest the dead and dying timber when there is the potential to get the highest return to the Government and to collect Knutsen-Vandenburg (K-V) funds to restore forest values being affected by extensive tree mortality. The salvage sales will also stimulate the local rural economy that has been impacted by reduced timber harvests.

The decision for the analysis area is scheduled for the latter part of July 1992. If projects are delayed because of appeals (delays can go from 100 days up to six months with an additional 15-20 days for discretionary review by the Chief of the Forest Service), it is unlikely that the projects could be implemented during the 1992 normal operating season and access would be difficult for a portion of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1993 logging season. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value to be decreased by as much as $375,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision to the harvest and restore lands affected by drought-induced timber mortality on the Sierraville Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

EFFECTIVE DATE: This decision will be effective July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, PO Box 6003, Nevada City, CA 95959, (916) 265-4531.

ADDITIONAL INFORMATION: Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the supplement. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners and other known interested parties. Two separate notices were sent to the local newspapers discussing the salvage sale program, encouraging public input, as well as informing the public that the District would be requesting an exemption from the appeal process.

Copies of the public involvement letters and responses are on file at the Sierraville Ranger District Office. The project files and related maps also are available for public review at Sierraville Ranger District Office, PO Box 95, Sierraville, CA 96126.

The catastrophic damage occurring within the salvage analysis area involves approximately 3500 acres and up to 10 million board feet. The value to the Forest Service of the salvage is estimated to be between $500,000 and $600,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Sierra County will share in 25% of the selling value for the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction.

The proposal is not expected to adversely affect snag-dependant wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers, Wilderness areas, or roadless areas are within the proposed project area. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forestwide Standards and Guidelines. Sensitive areas such as archaeological sites, spotted owl nest sites should they be found, or sensitive plant areas should they be identified will be avoided.

Dated: July 16, 1992.

Robert L. Butler,

Acting Regional Forester.

[FR Doc. 92-17349 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-11-M

Revised Land and Resource Management Plan for the National Forests and Grasslands in Texas, Angelina, Fannin, Houston, Jasper, Montague, Montgomery, Nacogdoches, Newton, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Walker, and Wise Counties, TX

AGENCY: Forest Service, USDA.

ACTION: Revised notice; expansion of scope of revision and revised availability dates for draft and final environmental impact statements.

SUMMARY: The Forest Service has, as a result of monitoring and evaluation and comments received during the scoping process, expanded the scope of the revision of the Land and Resource Management (LRMP) for the National Forests and Grasslands in Texas. To allow sufficient time to adequately conduct the analysis, the Forest service has also revised the availability dates for the draft and final environmental impact statements.

FOR FURTHER INFORMATION CONTACT: Dennis Robertson, Land Management Planning Staff Officer, National Forests in Texas, 701 N. First Street, Lufkin, Texas 75901, (409) 639-8501.

SUPPLEMENTARY INFORMATION: The Notice of Intent (NOI) to prepare an environmental impact statement to revise the Land and Resource Management Plan for the National Forests and Grasslands for Texas was published in the **Federal Register** for October 23, 1990 (55 FR 42745-42747). On page 42746, column 1, paragraph 3, it indicated that reconsideration of existing allocations of Scenic, Protective Corridors, and Research Natural Areas was not within the scope of the revision and that previously made decisions would continue to apply. However, during a revision of a land and resource management plan, the National Forest Management Act (NFMA) implementing regulations at 36 CFR 219.17 require reconsideration of Roadless Area Review and Evaluation (RARE II) areas for recommendation as potential wilderness. Since many of the existing scenic areas are located within RARE II areas they must be reconsidered in the revision process. The NFMA implementing regulations at 36 CFR 219.25 also require identification and recommendation of Research Natural Areas (RNAs) be made through the forest planning process. Some of the existing scenic areas have been proposed as RNAs and must be considered for recommendation in the revision process. Therefore, the scope of the revision is being expanded to now include reconsideration of existing scenic areas for wilderness or research natural area recommendations and/or for some other type of management area.

The NOI also indicated on page 42746, column 1, paragraph 3, that actions to control southern pine beetle (SPB) were not within the scope of the revision and previously made decisions would continue to apply. The Final Environmental Impact Statement for Suppression of Southern Pine Beetle Record of Decision (FEIS-SPB-ROD) did not specifically describe control actions appropriate for special areas such as scenic areas and protective corridors. The existing LRMP, approved in 1987, addresses treatment of SPB in scenic areas and protective corridors. However, monitoring and evaluation as documented in the Five-Year Review/ Analysis of the Management Situation, found that direction for SPB treatment in these areas is unclear. Therefore, the revision will clarify SPB treatment strategies for these areas. Control actions in General Forest and Wilderness areas will continue to be conducted in accordance with the direction found in the FEIS-SPB-ROD.

Since the scope of the revision has been expanded, the Forest Service has also revised the dates for availability of the draft and final environmental impact statements. The draft environmental impact statement was scheduled to be filed with the Environmental Protection Agency (EPA) and available for public review by September 1992. It is now expected to be available by April 1993. At that time EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**. The final environmental impact statement was scheduled to be completed by June 1993. It is now expected to be completed by December 1993.

Dated: July 17, 1992.

Charles E. Steele,

Acting Deputy Regional Forester.

[FR Doc. 92-17348 Filed 7-22-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: The Executive Committee of the President's Export Council is meeting to discuss priorities as determined at the June 24 Full Council meeting. Agenda items include the discussion of export promotion resources, GATT and NAFTA negotiations, initiatives for the NIS, and other sensitive matters properly classified under Executive Order 12356. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is

available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, 202–377–4217.

DATES: August 7, 1992, from 9 a.m.-11 a.m.

ADDRESSES: Main Commerce Building, rooms 3407 and 5854, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Smith, President's Export Council, room 3215, Washington, DC 20230.

Dated: July 17, 1992.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 92–17355 Filed 7–22–92; 8:45 am]

BILLING CODE 3510–DR–M

President's Export Council; Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Export Promotion, Resources, Communication and Marketing Subcommittee of the President's Export Council is holding a meeting to discuss export promotion resources and their allocation at the national and local levels of government and ways the Council can better work with District Export Councils in the future.

DATES: August 13, 1992, from 10 a.m. to 12 p.m.

ADDRESSES: Main Commerce Building, room 4830, 14th Street and Constitution Avenue NW., Washington, DC 20230. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia L. Prosak, President's Export Council, room 3215, Washington, DC 20230.

Dated: July 17, 1992.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 92–17356 Filed 7–22–92; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Endangered Species

AGENCY: National Marine Fisheries Service.

ACTION: Issuance of Permit Modification (P77#58).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 758 issued to the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038, on November 27, 1991, (56 FR 65498) to import one whole frozen totoaba specimen (*Cynoscion macdonaldi*) from Mexico is modified to extend the expiration date to December 31, 1992.

This Permit, as modified, becomes effective July 1, 1992.

Issuance of this Permit, as modified, as required by the Endangered Species Act of 1973, is based on the finding that the Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this Permit, as modified, are available for review by appointment in the Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, California 90802–4213 (310/980–4015);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893–3141).

Dated: July 16, 1992.

Nancy Foster,

Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 92–17327 Filed 7–22–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

July 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In an exchange of letters dated July 8 and 9, 1992, the Governments of the United States and the United Mexican States agreed to increase the designated consultation level (DCL) for Category 435.

Further, the two governments agreed to establish a Special Regime DCL for Category 435, effective on January 1, 1993.

Beginning on September 1, 1992, U.S. Customs will start signing the first section of form ITA-370P for shipments of U.S. formed and cut fabric in Category 435 that are destined for Mexico and re-exported to the United States on and after January 1, 1993.

Shipments of goods in Category 435 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota levels for Category 435.

Textile products in Category 435, which are assembled in Mexico from parts cut in the United States from fabric formed in the United States, are governed by Harmonized Tariff Schedule item 9802.00.8010, chapter 61 statistical note 5 and chapter 62 statistical note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Category 435 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Mexico in order to qualify for entry under the Special Regime.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 65243, published on December 16, 1991.

Requirements for participation in the Special Regime Program are available in Federal Register notices 53 FR 15724, published on May 3, 1988; 53 FR 32421, published on August 25, 1988; 53 FR 49346, published on December 7, 1988; and FR 50425, published on December 8, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the exchange of letters, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 17, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on July 24, 1992, you are directed to increase the current limit for Category 435 to 20,000 dozen.

Beginning on September 1, 1992, you are directed to begin signing the first section of the form ITA-370P for shipments of U.S. formed and cut parts in Category 435 that are destined for Mexico and re-exported to the United States on and after January 1, 1993. Shipments of goods in Category 435 which are re-exported from Mexico prior to January 1, 1993 shall not be permitted entry under the Special Regime Program and shall be charged to the existing quota level for Category 435.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-17366 Filed 7-22-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Assessment Governing Board and its committees. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATES: August 5, 6, and 7, 1992.

TIMES: August 5, 1992—Achievement Levels Committee—3 p.m. to 4 p.m. (open), 4 p.m. to 5 p.m. (closed); Subject Area Committee #1—4 p.m. to 6 p.m. (open); Ad Hoc Committee on Future NAEP II—5 p.m. to 7 p.m. (open); Executive Committee—7 p.m. to 9 p.m. (open), 9 p.m. to 9:30 p.m. (closed). August 6, 1992—National Assessment Governing Board—8:30 a.m. to 9 a.m. (open), 11 a.m. to 12 noon (open), 12 noon to 1 p.m. (closed), 1 p.m. to 4:45 p.m. (open); Design and Analysis Committee—9 a.m. to 11 a.m. (open); Reporting and Dissemination Committee—9 a.m. to 11 a.m. (open); Subject Area Committee #2—9 a.m. to 9:45 a.m. (open), 9:45 a.m. to 11 a.m. (closed). August 7, 1992—Full Board—8:30 a.m. until adjournment, approximately 1:30 p.m. (open).

LOCATION: Madison Hotel, 15th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). (20 U.S.C. 1221e-1). The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On August 5, four committees will be in session. The Achievement Levels Committee will meet in open session from 3 p.m. to 4 p.m. to be briefed on the setting of achievement levels for the writing assessment, discuss achievement levels validation activities, and receive an update on the National Academy of Education's evaluation of the achievement levels setting process.

The Achievement Levels Committee meeting will be closed to the public between 4 p.m. and 5 p.m. to permit the Committee to review preliminary unreleased data from the 1992 math assessment. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The Subject Area Committee #1 will meet from 4 p.m. to 6 p.m. The Committee will hear a presentation on the U.S. History Consensus project by the contractor, and discuss the plans for reviewing items developed for the 1994 assessment.

The Ad Hoc Committee on Future NAEP II will meet from 5 p.m. to 7 p.m. The Committee will discuss the recommendations it will make on assessment of non-mandated subjects and discuss plans for further work in obtaining comment to inform the development of policy positions on issues related to the future of NAEP.

Also on August 5, the Executive Committee will meet in open session from 7 p.m. to 9 p.m. to review a progress report from the Ad Hoc Committee on Future NAEP II, to receive a briefing on pending legislative actions, including appropriations for NAEP, and to review plans for releasing the 1992 assessment data for reading and writing.

For the remainder of the meeting, from 9 p.m. to 9:30 p.m., the Executive Committee will meet in closed session to discuss the qualifications of current Board members to serve as Chairman of NAGB. Based on these discussions, the Board will recommend a new Chairman to the Secretary. This session will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, and as

such, is protected by exemption (6) of section 552b(c) of title 5 U.S.C.

Between 9 p.m. and 9:30 p.m., the Executive Committee will also discuss the implementation of personnel policy recommendations set out in the Memorandum of Understanding recently entered into between the Secretary of Education and NAGB. This discussion will relate solely to the internal personnel rules and practices of an agency and is protected by exemption (2) of section 552b(c) of title 5 U.S.C.

On August 6, the full Board will meet in open session from 8:30 a.m. to 9 a.m. The agenda will be reviewed and the Executive Director's report will be presented. During the period from 9 a.m. to 11 a.m., there will be meetings of the Design and Analysis, Reporting and Dissemination, and Subject Area #2 committees. The Design and Analysis Committee and the Reporting and Dissemination Committee meetings, held from 9 a.m. to 11 a.m. are open to the public. The Subject Area Committee #2 will meet in open session from 9 a.m. to 9:45 a.m. to discuss the arts consensus, and from 9:45 a.m. to 11 a.m. in closed session to review secure science items for the 1994 assessment. Premature disclosure of this data might significantly frustrate implementation of the NAEP and/or a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

The full Board will reconvene at 11 a.m. to hear a briefing on test validity. From 12 noon, until approximately 1 p.m., the Board will meet in closed session for briefings by American College Testing to discuss unreleased preliminary data from the 1992 math assessment. The presentations will include discussions and references to specific items from the assessment, the disclosure of which might significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be misinterpreted, incorrect, or incomplete. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. The remaining agenda, from 1 p.m. to 4:45 p.m., includes Board action on the 1992 Mathematics Achievement Levels, update on NAEP activities, and progress reports on two NAGB projects, Future NAEP II and the Arts Consensus.

On August 7, the full Board will meet from 8:30 a.m. until adjournment, at approximately 1:30 p.m. The proposed agenda for this portion of the meeting includes a presentation from the National Goals Panel, reports from the NAGB committees, nomination of a Board Chairperson, and election of a Vice Chairperson.

A summary of the activities of the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: July 20, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-17345 Filed 7-22-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Removal of the 100-D Vent Pipes From an Island in the Columbia River, Hanford Site, Richland, WA

AGENCY: Department of Energy (DOE).

ACTION: Floodplain statement of findings.

SUMMARY: This Statement of Findings is prepared pursuant to Executive Order 11988 and 10 Code of Federal Regulations (CFR) part 1022, Compliance with Floodplain/Wetlands, Environmental Review Requirements. DOE has determined that some activities associated with the removal of the 100-D Area vent pipes are proposed to be within the 100-year floodplain of the Columbia River. Following publication of a notice floodplain and wetland involvement in the **Federal Register** (56 FR 63504, December 4, 1991, DOE prepared a Floodplain/Wetlands Assessment for the proposed action, pursuant to 10 CFR 1022.12. DOE has determined that there is no practicable alternative to the proposed action and that the proposed action has been designed to avoid or minimize adverse impacts to the floodplain of the Columbia River. A map showing the location of the proposed action relative to the Columbia River 100-year floodplain is included in the Floodplain/Wetland Assessment.

The proposed action would remove vent pipes from an island in the Columbia River adjacent to the 100-D Area of the Hanford Site. The pipes seasonally are submerged or exposed, depending on the level of the Columbia River. The proposed action is necessary to eliminate a potential public and navigational hazard in the Columbia River and to prevent a potential exposure risk to human health and the environment.

Availability of Floodplain/Wetlands Assessment: Single copies of the Floodplain/Wetlands Assessment are available from Mr. Paul M. Pak, DOE Richland Field Office, Richland, Washington 99352 (509) 376-4798.

Timing of Floodplain Action/Public Review Period: The public will have the opportunity to review this Statement of Findings and the Floodplain/Wetlands assessment until August 7, 1992, in accordance with 10 CFR 1022.18(a). DOE will not implement the proposed action prior to the end of this public review period. Any comments should be forwarded to the same address or fax comments to: (509) 376-7818.

PROPOSED ACTION: During operation of the 100-D Reactor from 1944 to 1967, the reactor was cooled with water withdrawn from the Columbia River. After a holding period, the water was discharged back to the Columbia River through two 42-inch diameter process effluent lines. These two lines traversed under a channel of the Columbia River, crossed through the 100-D Area Island, and discharged water into the main channel of the Columbia River. Approximately 40 1-inch diameter T-shaped pipes were installed to allow venting of entrained gases from the reactor coolant to occur above the surface of the island. Although discharges to the river ceased in 1967 when the 100-D Reactor was closed, the vent pipes remained in place and now protrude 1 to 3 feet (0.3 to 0.9 meter) above grade elevation when the island is exposed. The proposed action would remove the vent pipes by excavating to below grade elevation around the vent pipes, cutting off and capping the pipes, and backfilling the holes.

The proposed action would be performed during seasonal low-water levels, when the island is exposed. Several steps would be taken to minimize potential harm to or within the floodplain. A biological survey would be performed before removal activity begins; all excavation and filling would be performed with hand tools; excavation would be limited to activities necessary to provide adequate access to cut off the pipes below the island surface; fill material would be surveyed before backfilling to ensure that the materials are not radioactively contaminated; and cobbles would be replaced after pipe removal to minimize

turbidity when the river inundates the area.

Reviews of past land use indicates that the 100–D Area Island has not been used for any industrial or operational activity except for vent pipe installation. Hazardous waste contaminants are therefore not expected to be present.

Preliminary surveys of the site have indicated that the pipes exhibit low levels of contamination that is not removable by wiping, but the cobble, sand, and gravel material to be excavated is not radioactively contaminated. In the event that the excavated material is contaminated, the holes would be filled with uncontaminated cobble from other nearby portions of the island and the contaminated excavated material would be removed from the island and disposed at an existing permitted Hanford Site disposal unit. Fill material would not be brought to the island from other locations on the Hanford Site.

The proposed action was designed to conform to applicable Federal and State requirements. All applicable Federal, State, or local permits would be obtained, and applicable notifications made before commencement of the vent pipe removal activity. A general permit application would be submitted to the U.S. Army Corps of Engineers for excavation and removal of the vent pipes.

The Hanford Reach of the Columbia River is currently under consideration for Wild and Scenic River status. To comply with Public Law 100–605, the Hanford Reach Study Act, information about the proposed action was presented to representatives of the National Park Service (NPS) and the Fish and Wildlife Service (F&WS). Based on the review of the proposed action by NPS and F&WS, it was determined that this activity would have no adverse impact on the Hanford Reach of the Columbia River.

Two alternatives to the proposed action were analyzed and determined not to be practicable. The no action alternative, leaving the vent pipes in place, would leave a navigational hazard as well as a potential health hazard in a publicly accessible area.

The second alternative analyzed, the removal of the main 100–D reactor effluent pipes as well as the vent pipes, would preclude the determination of final disposition of the 100–D Area operable units of the Hanford Site; this determination will be made in accordance with the Hanford Federal Facility Agreement and Consent Order and future National Environmental Policy Act documentation.

FURTHER INFORMATION CONTACT: Mr. Paul M. Pak, DOE Richland Field Office, Richland, Washington 99352, (509) 376–4798.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–17425 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: the Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 24, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of you intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–16
3. 1902–0025
4. Report of Gas Supply and Requirements
5. Extension
6. Semi-annually
7. Mandatory
8. Businesses or other for-profit
9. 50 respondents
10. 2 responses
11. 80 hours per response
12. 8,000 hours
13. FERC–16 data are used by the Commission in analyzing the natural gas supplies and requirements of interstate pipelines. The data are also used to evaluate certificate applications for construction and for pipeline rate cases.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. § 764(a), 764(b), 722(b), and 790a.

Issued in Washington, DC, July 15, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92–17415 Filed 7–22–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92-487-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 16, 1992.

Take notice that the following filings have been made with the Commission.

1. Tampa Electric Company

[Docket No. ER92-487-000]

Take notice that on July 7, 1992, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of updated Committed Capacity and Short-Term Power Transmission Service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry Phosphates) and Seminole Fertilizer Corporation (Seminole Fertilizer). Tampa Electric proposes a reduction in the updated Short-Term Power Transmission Service rate.

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1992, under the agreement with Mulberry Phosphates, and concurrently with the proposed effective date for the agreement with Seminole Fertilizer, *i.e.*, the earlier of October 1, 1992, or the in-service date of the power sale contract between Seminole Fertilizer and Florida Power Corporation. Accordingly, Tampa Electric requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Mulberry Phosphates, Seminole Fertilizer, and the Florida Public Service Commission.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Colorado Public Service Company

[Docket No. ER92-507-000]

Take notice that on July 7, 1992, Colorado Public Service Company (Public Service Company) tendered for filing an amendment to the Power Purchase Agreement between Public Service Company and WestPlains Energy.

Comment date: July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER92-701-000]

Take notice that on July 7, 1992, PacifiCorp tendered for filing the final executed Lost Creek Transmission Service Agreement between PacifiCorp and Bonneville Power Administration.

Comment date: July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. PacifiCorp

[Docket No. ER92-695-000]

Take notice that on July 6, 1992, PacifiCorp tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 321.

Comment date: July 30, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Vermont Electric Power Company, Inc.

[Docket No. ER92-686-000]

Take notice that on July 1, 1992, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 33.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER92-436-002]

Take notice that on July 6, 1992, Florida Power Corporation (FPC) tendered for filing its compliance filing in this docket pursuant to the Commission's order issued on June 4, 1992.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Interstate Power Company

[Docket No. ER92-704-000]

Take notice that on July 10, 1992, Interstate Power Company (IPW) tendered for filing Amendment Nos. 1, 2, 3 and 4 to the Electric Service Agreement between the Municipal Light and Water Department Board of Trustees of the City of Bellevue and Company. These Amendments revise the firm power commitment.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER92-700-000]

Take notice that Pennsylvania Power & Light Company (PP&L) on July 7, 1992, tendered for filing an executed Supplemental Agreement between PP&L and UGI Utilities, Inc. (UGI) ("1992 Supplemental Agreement") to the LU-PL Interconnection Operating Principles and Practices Issued in Accordance with the Interconnection Agreement Dated August 1, 1935. ("OPP Agreement"). The OPP Agreement is designated by the Commission as PP&L Rate Schedule No. 46 and as UGI Rate Schedule No. 3 and sets forth the terms and conditions governing the operation of the interconnections between PP&L and UGI.

PP&L and UGI are also parties to a Power Supply Agreement dated June 1, 1992 ("1992 PSA"), that will supersede and replace the November 22, 1977, Power Supply Agreement between PP&L and UGI, as supplemented to date, and designated by the Commission as PP&L Rate Schedule No. 68 ("1977 PSA"). PP&L filed the 1992 PSA for approval with the Commission on June 12, 1992 in Docket No. ER92-642-000. PP&L states that approval of the 1992 PSA requires that PP&L amend the OPP Agreement to prevent the 1977 Supplement to the OPP Agreement ("1977 Supplemental Agreement") from expiring by its terms when the 1992 PSA supersedes and replaces the 1977 PSA. Further, the 1992 Supplemental Agreement amends the OPP Agreement to allow PP&L, acting as UGI's agent, to pass on to UGI any credits received by PP&L as a result of the utilization of UGI's share of the PJM Transmission System Import Capability.

PP&L requests that the Commission permit the 1992 PSA to be effective on the same date the 1992 PSA is given effect. PP&L states that a copy of its filing was served on UGI and the Pennsylvania Public Utility Commission.

Comment date: July 29, 1992, in accordance with Standard Paragraph E end of this notice.

9. Duke Power Company

[Docket No. ER92-698-000]

Take notice that on July 7, 1992, Duke Power Company (Duke) filed a letter describing a proposed change in rate which amends Duke's Appendix B to the Contract for Short Term Power Transactions between Cajun Electric Power Cooperative, Inc. and Duke Power Company.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER92-699-000]

Take notice that on July 7, 1992, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, an Energy Exchange Agreement executed on March 23, 1992, with the City of Seattle, City Light Department. IPC has requested an effective date for the Agreement of November 1, 1992.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER92-702-000]

Take notice that Portland General Electric Company (PGE), on July 9, 1992, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on November 1, 1991. This filing includes PGE's revised Appendix 1 to the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 32.90 mills/kWh. The Bonneville Power Administration determined the ASC rate for PGE to be 32.59 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: July 29, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17339 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-154-001, et al.]

Colorado Interstate Gas Company et al.; Natural Gas Certificate Filings

Take notice that the following have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP92-154-001]

July 15, 1992.

Take notice that on July 13, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-154-001 a petition to amend the order issued in Docket No. CP92-154-000 [1] pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to amend the order issued in Docket No. CP92-154-000 by changing the capacity of the compressor units authorized therein. It is stated the CIG has reviewed its compression requirements and determined that the units authorized provided capacity in excess of CIG's actual needs. CIG proposes in the petition to amend to reduce the capacity of the unit at the Boehm Compressor Station (Boehm) from 1,650 horsepower to 1,100 horsepower and to reduce the capacity of the unit at the Flank Compressor Station (Flank) from 1,650 horsepower to 1,500 horsepower. It is asserted that the total reduction would be 700 horsepower and that the total capacity required for the project would be 2,600 horsepower. It is further asserted that these reductions would result in a total estimated savings of $2,361,500 ($1,226,700 for Boehm and $1,134,800 for Flank).

Comment date: August 5, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. City Gas Company of Florida, Inc.

[Docket No. CP92-583-000]

July 15, 1992.

Take notice that on July 7, 1992, City Gas Company of Florida, division of Elizabethtown Gas Company (City Gas), 955 East 25th Street, Hialeah, Florida 33013 filed in Docket No. CP92-583-000 an application pursuant to section 7(a) of the Natural Gas Act (NGA) for an order directing Florida Gas Transmission Company (Florida Gas) to provide service to City Gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

City Gas states that it is a local gas distribution company in Florida and proposes to provide gas service to Port St. Lucie, Florida. City Gas states that the proposed market is primarily residential, with a few small commercial/industrial customers anticipated.

City Gas estimates third year maximum day requirements to be 10,060 therms and third year annual requirements to be 1,425,000 therms.

City Gas states that no increase in contract demand will be necessary since it will provide this new service within the constraints of its existing contracts with Florida Gas.

City Gas requests that Florida Gas be required to establish a new point of delivery to City Gas to enable it to provide service to Port St. Lucie, Florida.

Comment date: August 14, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP92-594-000]

July 16, 1992.

Take notice that on July 13, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-594-000, a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon the sale of gas for resale to Chase County Gas Company, Inc. (Chase), under its blanket certificate authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williams proposes to abandon the sale of gas under its Rate Schedule PR(A) to Chase for resale to the cities of Cottonwood Falls, Strong City and Florence, Kansas. Chase elected to reject its sales contract with Williams and instead secured sales service from third parties for transportation by Williams, it is explained. Williams indicates further that it is currently transporting gas to Cottonwood Falls, Strong City, and Florence under Williams' Docket No. ST92-1275-000.

As stated by Williams, the facilities will remain in place to facilitate the transportation of gas.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP92-585-000]

July 16, 1992.

Take notice that on July 8, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-585-000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a portion of a sales lateral under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as

[1] Issued June 29, 1992, 59 FERC ¶61,393.

more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to abandon by reclaim a 1.98-mile segment of a 4-inch lateral line which is no longer in use. United states that the facilities are located on its Avri 4-inch line from Abbeville Town Border Station 767+65 to Steen's Tap Station 662+76, located off United's TPL (transmission pipeline) 205–7 in Vermilion Parish, Louisiana. United explains that the line segment formerly was used to provide natural gas service to Entex, Inc. (Entex), at four farm taps located within Entex's Crowley, Louisiana, billing area, and was originally authorized in Docket No. CP80–356. United states that, in August 1991, Entex extended its own distribution system to those farm taps and now serves those customers directly. It is stated that, since United currently provides Entex's natural gas requirements for resale in the Crowley billing area, United can now abandon and remove the line segment without affecting service to Entex or any of Entex's customers. It is indicated that the cost of removal of the line segment would be approximately $67,669 and there would be no associated salvage value.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP92–593–000]

July 16, 1992.

Take notice that on July 13, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–593–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate 5 new delivery points to accommodate deliveries of natural gas to Iowa Electric Power and Light Company (Iowa Electric), a jurisdictional sales customer, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate the new delivery points in various locations in Iowa in response to a request from Iowa Electric. It is stated that Iowa Electric requires the delivery points as a result of expansion of its distribution system into new areas. It is explained that the delivery points would be located in the following counties in Iowa: Buchanan, Tama, Hardin, Story, and Marshall. It is stated that the gas would be used for residential and commercial end uses. It is explained that Northern makes sales of natural gas to Iowa electric under its CD–1 and FT–1 rate schedules. It is asserted that the volumes delivered at the proposed delivery point would total 1,145 Mcf on a peak day and 143,655 Mcf on an annual basis. It is further asserted that these volumes would be within currently authorized entitlements. It is estimated that the cost of installing the facilities would be $132,000.

Comment date: August 31, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. Eastern Natural Gas Company

[Docket No. CP92–582–000]

July 16, 1992.

Take notice that on July 7, 1992, Eastern Natural Gas Company (Eastern), P.O. Box 377, Frazeysburg, Ohio 43822, filed a motion with the Commission requesting a waiver of the Commission's reporting and accounting requirements and all other rules and regulations under the Natural Gas Act (NGA) and Natural Gas Policy Act of 1978 (NGPA) that may be applicable to Eastern as a natural gas company, all as more fully set forth in the motion which is open to public inspection.

Eastern states that it is a local distribution company engaged in the purchase, distribution, and retail sale of natural gas in Ohio pursuant to authorization granted by the Public Utilities Commission of Ohio (PUCO). The Commission authorized Eastern on November 4, 1986, to exchange natural gas volumes on a no-fee displacement basis with National Fuel Gas Distribution Corporation (National Distribution) and to construct and operate associated metering facilities.[2] This authorization did not affect the nonjurisdictional status of Eastern's operations. Eastern now requests a waiver of the Commission's reporting and accounting requirements, especially the FERC Form 2–A but not limited to it, because complying with such requirements is unduly burdensome, costly, and unnecessary. Eastern further states that its compliance with such reporting and accounting requirements is unnecessary since Eastern is essentially a non-jurisdictional entity with no jurisdictional revenues.

[2] See Eastern Natural Gas Company, National Fuel Gas Distribution Corporation, and National Fuel Gas Supply Corporation, Docket No. CP 86–351–000 [37 FERC ¶ 61,082].

Comment date: August 6, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall

be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17340 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-07746T, Oklahoma-24]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 17, 1992.

Take notice that on July 14, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Hunton Formation underlying a portion of Major County, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Sections 4, 5 and 6, Township 20 North, Range 11 West; Sections 16 through 22 and Sections 27 through 34, Township 21 North, Range 11 West and Section 24, Township 21 North, Range 12 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Upper Hunton Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17386 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-504-000]

Arkla Energy Resources, a Division of Arkla, Inc. and Arkla Energy Resources Co.; Technical Conference

July 17, 1992.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Tuesday, August 4, 1992, at 10 a.m., in room 3400-D at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208-2059.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17381 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-65-007]

Arkla Energy Resources, a Division of Arkla, Inc.; Notice To Implement Settlement Rates on an Interim Basis

July 17, 1992.

Take notice that on July 1, 1992, Arkla Energy Resources, a division of Arkla, Inc., (AER), respectfully requests Commission authorization, pending action on a Stipulation and Agreement (Settlement) filed in this proceeding, to place into effect on an interim basis the base tariff rates included on the revised tariff sheets attached as appendix A to the filing.

AER states that on May 14, 1992, the parties filed the settlement, which will provide AER and its customers with the rate stability that they now need, while discussions continue concerning the structure of AER's future services. On July 18, 1992, the Presiding Administrative Law Judge certified the Settlement to the Commission.

AER states that the tariff sheets, are being filed in compliance with the Settlement, which requires AER to move to place the Settlement Rates into effect once the Settlement has been certified.

AER also requests Commission authorization, without waiting for rehearing, to reinstate its currently effective motion tariff rates on a prospective basis if the Commission (1) rejects the Settlement, or (2) approves the Settlement subject to conditions or modifications that are unacceptable to AER.

AER requests that the Commission grant this motion and permit AER to collect the appendix A rates beginning August 1, 1992 and continuing until the Commission acts on the Settlement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17383 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-32-001]

Colorado Interstate Gas Co.; Compliance Filing

July 17, 1992.

Take notice that on July 14, 1992, in compliance with the Federal Energy Regulatory Commission's (Commission's) order issued June 29, 1992 in Docket TQ92-3-32-000, Colorado Interstate Gas Company ("CIG") submitted for filing an original and five copies of Substitute Fifth Revised Sheet Nos. 7.1 through 8.2. CIG requests that these proposed tariff sheets be made effective on July 1, 1992.

As required by the order, the filing reflects the currently effective rate for Williston Basin Interstate Pipeline Company that came out of suspension during this PGA quarter. The tariff rates underlying Substitute Fifth Revised Sheet Nos. 71. through 8.2 reflect a 0.51 cent/Mcf decrease in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. There is no change in the Demand-1 or Demand-2 rates because CIG does not currently incur "as billed" charges from its suppliers.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17388 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-176-001]

Colorado Interstate Gas Co.; Tariff Filing

July 17, 1992.

Take Notice that on July 10, 1992, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheet in its Original Volume No. 3 FERC Gas Tariff.

Substitute Original Sheet No. 60A

CIG states that the purpose of this filing is to comply with the Commission Order issued on June 30, 1992, in FERC Docket No. RP92-176-000 requiring CIG to modify Section 9.1 of Sheet No. 60A to clarify that Shippers are not required to pay a rate higher than the maximum rate contained in CIG's tariff for storage and transportation service.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17391 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-185-000]

El Paso Natural Gas Co.; Technical Conference

July 17, 1992.

Pursuant to the Commission's order, issued on July 2, 1992, a technical conference will be held to resolve the issues related to El Paso's proposed "Unauthorized Overpull Penalty," "Unauthorized Gas," and "Cash-out of Imbalances" tariff provisions, raised in the above-captioned proceeding. The conference will be held on Thursday August 6, 1992, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17384 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-78-003 and CP92-108-001]

Midwestern Gas Transmission Co.; Tariff Filing To Implement Stipulation and Agreement

July 17, 1992.

Take notice that on June 30, 1992, Midwestern Gas Transmission Company (Midwestern) filed the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Third Revised Sheet No. 43
Second Revised Sheet No. 47
Original Sheet No. 47A
Original Sheet No. 47B
Original Sheet No. 47C
Original Sheet No. 47D
Original Sheet No. 47E
Original Sheet No. 47F
Second Revised Sheet Nos. 48—49
Third Revised Sheet No. 62A
Third Revised Sheet No. 62B
Second Revised Sheet No. 62C
Third Revised Sheet No. 62D
Fourth Revised Sheet No. 62E
Fourth Revised Sheet No. 62F
Second Revised Sheet No. 62G
Original Sheet No. 62H
Original Sheet No. 62I
Original Sheet No. 62J
Original Sheet No. 62K
Third Revised Sheet No. 66
Original Sheet No. 66A
Second Revised Sheet No. 67
Third Revised Sheet No. 85
Third Revised Sheet No. 86
Third Revised Sheet No. 87
Third Revised Sheet No. 88
Third Revised Sheet No. 89
Fourth Revised Sheet No. 90
Third Revised Sheet No. 91
Third Revised Sheet No. 92
Third Revised Sheet No. 93
Third Revised Sheet No. 94
Third Revised Sheet No. 95—109
Second Revised Sheet No. 151
Original Sheet No. 151A
Original Sheet No. 151B
Original Sheet No. 151C
Original Sheet No. 151D
Original Sheet No. 151E
Original Sheet No. 151F
Second Revised Sheet No. 152
Original Sheet No. 152A
Original Sheet No. 152B
Original Sheet No. 152C
Original Sheet No. 152D
Original Sheet No. 152E
Second Revised Sheet Nos. 153—159

Midwestern States that the revised tariff sheets implement the rates, terms and conditions of the Stipulation and Agreement in these proceedings dated October 17, 1991 as revised by the agreed upon modifications filed contemporaneously with the instant filing. Midwestern states that the tariff sheets reflects a new commodity surcharge to recover take-or-pay buy-out and buy-down costs billed by Tennessee Gas Pipeline Company, (Midwestern's upstream supplier), consistent with Order Nos. 528 and 528-A, establish the rates, terms and conditions under which Midwestern will provide firm sales service through an interim gas inventory charge referred to as the "MGIC", and make various tariff changes to implement comparability of service. Midwestern requests approval of the filing so that the tariff sheets are effective on July 1, 1992.

Midwestern states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17387 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-192-000]

Northern Natural Gas Co.; Petition for Limited Waiver

July 17, 1992.

Take notice that on June 23, 1992, Northern Natural Gas Company (Northern), petitioned the Commission for a limited waiver of Northern's FERC Gas Tariff in order to allow Madison Gas and Electric Company (Madison Gas) to add an alternate delivery point to an existing Firm Transportation Service Agreement between Northern and Madison Gas while permitting Madison Gas to retain its existing priority in Northern's first-come, first-served queue.

Northern requests a waiver of its FERC Gas Tariff as necessary to allow Madison Gas to retain its place in Northern's priority queue at the ANR-

Janesville delivery point while adding the Madison TBS delivery point as an alternate delivery point to Madison Gas' Transportation Agreement so that all or part of the MDTQ may be used by Madison Gas at either delivery point.

Northern asserts that it seeks to add an alternate delivery point to an existing service agreement provided that (i) the same end-users and/or same customers would be served by such alternate delivery point; (ii) the alternate delivery point is in the same geographic location as the customers or end-users; and (iii) the addition to the alternate delivery point will not interfere with Northern's ability to render firm service to any other customer.

Northern states that copies of the filing were served upon all holders of Northern's FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17385 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-1-007]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 17, 1992.

Take notice that Northern Natural Gas Company (Northern) on July 9, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheets, proposed to be effective the first day of the month following an Order, which is anticipated to be September 1, 1992:

Fourth Revised Sheet No. 52F.14
Second Revised Sheet No. 52F.14a
Original Sheet No. 52F.14b
Fourth Revised Sheet No. 52F.15
Sixth Revised Sheet No. 56A
Eleventh Revised Sheet No. 67

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated June 29, 1992, in Docket Nos. RP92-1-005 and RP91-224-003, to clarify the tariff provisions regarding processing.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17389 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-054]

Northern Natural Gas Co., Proposed Changes in FERC Gas Tariff

July 17, 1992.

Take notice that Northern Natural Gas Company (Northern), on July 14, 1992, tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, proposed to be effective November 22, 1991:

Sub Thirty-Fourth Revised Sheet No. 86
Sub Thirty-Sixth Revised Sheet No. 90
Sub Twenty-Fourth Revised Sheet No. 94

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued June 29, 1992, in Docket No. RP88-259-050. Northern further states that copies of the filing have been mailed to each of its customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 24, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17390 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-73-000]

Pacific Interstate Offshore Co.; Conference

July 17, 1992.

Take notice that on August 12, 1992, a conference will be convened in the above-captioned docket to discuss Pacific Interstate Offshore Company's (PIOC) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17392 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-74-000]

Pacific Offshore Pipeline Co.; Conference

July 17, 1992.

Take notice that on August 13, 1992, a conference will be convened in the above-captioned docket to discuss Pacific Offshore Pipeline Company's (POPCO) summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17394 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M#

[Docket No. RS92-9-000]

Questar Pipeline Co.; Conference

July 17, 1992.

Take notice that on August 20, 1992, a conference will be convened in the above-captioned docket to discuss Questar Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426. The conference will begin at 9:30 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208-0708 or Marilyn Rand at (202) 208-0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17393 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-24-000]

Texas Gas Transmission Corp.; Conference

July 17, 1992.

Take notice that on July 30, 1992, a conference will be convened in the above-captioned docket to discuss Texas Gas Transmission Corporation's summary of its proposed plan for implementation of Order No. 636. This notice will supersede the notice issued on July 13, 1992, regarding the scheduling of this conference in this docket.

The conference will be held at the Washington Airport Dulles Marriott Hotel, located at 333 West Service Road, Chantilly, Virginia, 22021, on July 30 and 31, 1992. The conference will begin at 1 p.m. on July 30, 1992. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Patrick Seferovich at (202) 208-0504 or Bob Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-17382 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-569-000]

Viking Gas Transmission Co; Request Under Blanket Authorization

July 16, 1992.

Take notice that on July 1, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-569-000, as supplemented and amended on July 8 and 13, 1992, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add a new delivery point for transportation service provided for Peoples Natural Gas Company, a Division of UtiliCorp United Inc. (PNG), under Viking's blanket certificate issued in Docket No. CP82-414-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Viking proposes to install and operate a 2-inch hot tap and related facilities, including a skid mounted, positive displacement meter (maximum rated capacity of 3,200 Mcf per day), at M.P. 2213+20.7 (site 2) on Viking's system in Camp Ripley, Morrison County, Minnesota. Viking explains that the delivery point would be used for deliveries of gas under a gas transportation agreement dated October 1, 1990, under which Viking provides an interruptible transportation service to PNG in accordance with Viking's Rate Schedule IT-2. Viking states that PNG would reimburse it for the cost of the facilities estimated to be $111,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-17341 Filed 7-22-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-73-NG]

OXY USA Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed on June 16, 1992, by OXY USA Inc. (OXY) requesting blanket authorization to import from Canada and to export to Mexico a combined total of up to 29.2 Bcf of natural gas for resale to industrial and agricultural end users, electric utilities, pipelines, and local distribution companies. OXY requests authorization for a two-year term beginning on the date of first import or export. The proposed imports and exports would take place at any point on the international borders where existing facilities are located. OXY would provide DOE with quarterly reports detailing any import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 24, 1992.

ADDRESSES: Office of Fuels Programs Fossil Energy U.S. Department of Energy Forrestal Building, room 3F-056, FE-50 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: OXY, a Delaware corporation with its principal place of business in Tulsa, Oklahoma, is a natural gas producer and marketer. The requested import authorization will enable OXY to sell Canadian natural

gas in various U.S. markets. Blanket export authorization would allow OXY to sell U.S. natural gas for which there is no present domestic need. OXY would import and export natural gas for its own account, as well as for the accounts of others. The gas would be imported and exported under short-term, market-responsive contracts.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). When reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties who may oppose this application should comment in their responses on these issues. OXY asserts that imports made under this arrangement would be competitive and that there is no current need for the domestic gas which would be exported. Parties opposing OXY's application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of OXY's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Issued in Washington, D.C., on July 16, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-17414 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of June 19 Through June 26, 1992

During the week of June 19 through June 26, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 19 through June 26, 1992]

Date	Name and location of applicant	Case No.	Type of submission
6/19/92	Gulf/Teague Industries, Inc., Plano, TX	RR300-178	Request for Modification/Recession in the Gulf refund proceeding. If granted: The June 17, 1992 Dismissal Letter (Case No. RF300-12769) issued to Teague Industries, Inc., regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
Do	Gulf/A.J. Miller Trucking Co., Atlanta Beach, FL	RR300-179	Request for Modification/Rescission in the Gulf refund proceeding. If granted: The April 24, 1992 Dismissal Letter (Case No. RF300-13897) issued to A.J. Miller Trucking Company regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 19 through June 26, 1992]

Date	Name and location of applicant	Case No.	Type of submission
6/22/92	William P. Wells, North Miami Beach, FL	LFA-0218	Appeal of an Information Request. If granted: William P. Wells would receive access to documents relating to Dr. Einstein.
6/24/92	Gulf/H. B. Ham Gulf, Atlantic Beach, FL	RR300-180	Request for Modification/Rescission in the Gulf refund proceeding. If granted: The June 4, 1992 Decision and Order (Case No. RF300-14854) issued to H. B. Ham Gulf regarding the firm's Application for Refund submitted in the Gulf refund proceeding would be modified.
6/25/92	John R. Brodeur, Seattle, WA	LFA-0217	Appeal of an Information Request Denial. If granted: The June 18, 1992 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and John R. Brodeur would receive access to requested documents.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
6/19/92 thru 6/26/92	Crude Oil Applications Received	RF272-92721 thru RF272-93191.
6/19/92 thru 6/26/92	Texaco Refund Applications Received	RF321-18717 thru RF321-18815.
6/22/92	Lee Langland Super 100	RF342-235.
6/22/92	Dave's Supper 100	RF342-235
6/22/92	Systems Fuels, Inc.	RF339-10.
6/22/92	Gulf Tri City Oil Company	RF300-20301.
6/22/92	BASF Wyandotte Chemicals	RF300-20302.
6/22/92	Tom Oil Company	RF300-20303.
6/22/92	James L. Turnbaugh	RF300-20304.
6/22/92	St. Pierre Gulf Service	RF300-20305.
6/22/92	Dow Chemical, USA	RF300-20306.
6/22/92	John C. Manchester, Inc. #2	RF300-20307.
6/22/92	H & W Gulf Service	RF300-20308.
6/22/92	Newhall Land/Farming Company	RF304-13186.
6/22/92	Container Plus, Inc.	RF304-13187.
6/23/92	Bucyrus Bulk Plant	RF304-13188.
6/23/92	J & J Arco	RF304-13189.
6/25/92	Jerry Harmon's Super "100"	RF342-237.
6/26/92	State of La, Div. of Admin.	RF304-20390.

[FR Doc. 92-17410 File 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of June 26 Through July 3, 1992

During the Week of June 26 through July 3, 1992, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 26 through July 3, 1992]

Date	Name and location of applicant	Case No.	Type of submission
6/26/92	Gulf/Southland Gulf Super Service, Miami, FL	RR300-181	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 22, 1992 Dismissal Letter (Case No. RF300-11616) issued to Southland Gulf Super Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
6/29/92	Revere Petroleum Corp. & Richard E. Dobyns, Atlanta, GA	LRR-0011	Request for Modification/Rescission. If granted: The May 29, 1992 Decision and Order (Case No. HRO-0125) would be rescinded regarding the alleged violations by Revere Petroleum Corporation of crude oil price regulations.
Do	Gulf/Ballejo Gulf, Woodbridge, VA	RR300-182	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The March 30, 1992 Dismissal Letter (Case No. RF300-13575) issued to Ballejo Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding
7/1/92	Gulf/Rosamilia Brothers' Gulf, Woodbridge, VA	RR300-183	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The April 6, 1992 Dismissal Letter (Case No. RF300-13295) issued to Rosamilia Brothers' Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 26 through July 3, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Do	David K. Cox, Oak Ridge, Tennessee	LFA-0219	Privacy Act Request Denial. If granted: The Privacy Act Request Denial issued by the Privacy Act Officer, U.S. Department of Energy, Oak Ridge Field Office, would be rescinded, and David K. Cox would receive access to information located in his personnel security file.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
6/26/92 thru 7/3/92.	Crude oil applications received.	RF272-93192 thru RF272-93561.
6/26/92 thru 7/3/92.	Texaco refund applications received.	RF321-18816 thru RF321-18832.
6/26/92 thru 7/3/92.	Gulf Oil refund applications received.	RF300-20310 thru RF300-20336.
6/28/92	City of Vinton	RA272-51.
6/29/92	Pat's ARCO	RF304-13190.
6/29/92	Humphrey Lloyd	RF304-13191.
6/29/92	Charley Monroe	RF342-238.
6/29/92	Lafoye's Clark Super 100.	RF342-239.
6/29/92	Bob's Clark Super 100	RF342-240.
6/29/92	Oscar Price Super 100	RF342-241.
6/30/92	Apex Oil Company	RF339-12.
6/30/92	Marathon Oil Company	RF339-11.
6/30/92	Al's Clark Super 100	RF342-242.
7/1/92	Chala Enterprizes, Inc	RF315-10215.

[FR Doc. 92-17411 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of June 29 Through July 3, 1992

During the week of June 29 through July 3, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Daniel Grossman, 7/1/92, LFA-0215

Daniel Grossman filed an Appeal from a partial denial by the Director of the Office of the Executive Secretariat of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the search of the Office of the Executive Secretariat for responsive documents was adequate, and that it would be inappropriate to order the Office of Classification to immediately review classified documents identified as responsive to Mr. Grossman's request. However, the DOE also found that there was no basis for limiting the search for responsive documents to the Office of the Executive Secretariat. The DOE therefore remanded the matter to the Chief, FOI and Privacy Act Office, to determine if a search of other DOE offices is warranted.

Refund Application

Texaco Inc./Ray's Texaco, 7/1/92, RR321-18

Raymond Esposito, the owner of Ray's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate Texaco refund applications that he had filed. In the Motion, Mr. Esposito stated that he had signed the second application, and certified in it that no other application had been filed, because he believed that his representative had not filed an application that he had previously authorized. In considering the Motion, the DOE found that because of lack of communication from his representative, Mr. Esposito had reason to believe that no refund application on his behalf was pending with the Office of Hearings and Appeals. Accordingly, Mr. Esposito's Motion was granted and he was awarded a refund of $3,456.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Name	Case No.	Date
Atlantic Richfield Company/Anthony's ARCO in Keansburg *et al.*	RF304-13038	07/02/92
Atlantic Richfield Company/Ben's ARCO #1.	RF304-3121	07/02/92
Ben's ARCO #2	RF304-3122	
Ben's ARCO #3	RF304-3123	
Atlantic Richfield Company/Flippo's Oil Company.	RR304-42	06/29/92
City of Frostproof *et al.*	RF272-86415	07/01/92
City of Vinton	RA272-51	07/02/92
Exeter Drilling Company.	RF272-21082	07/01/92
Exeter Drilling Company.	RD272-21082	
Gulf Oil Corporation/Baggett Transportation *et al.*	RF300-14541	07/01/92
Gulf Oil Corporation/S&S Service Station *et al.*	RR300-143	07/02/92
Gulf Oil Corporation/Wayne Banks Gulf Service *et al.*	RF300-15607	07/01/92
Hughes School District *et al.*	RF272-78809	07/01/92
Norton Company	RA272-52	07/01/92
Shell Oil Company/Lynn's Shell Service *et al.*	RF315-332	07/02/92
Shell Oil Company/Piedmont Aviation, Inc.	RF315-5517	07/01/92
Speedway Transportation, Inc.	RF272-14593	06/29/92
Speedway Transportation, Inc.	RD272-14593	
Starrett City Associates.	RF272-63905	07/01/92
Starrett City Associates.	RD272-63905	
Texaco Inc./Public Service Electric & Gas *et al.*	RF321-6558	07/01/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Alvarez Body Shop	RF304-4404
B B Fuels, Inc	LEE-0022
Bob's Gulf	RF300-14797
Briarwood Texaco	RF321-12399
Cliff's Gulf Service	RF300-14853
Cooper Wiese	RF321-12212
Eades Gulf	RF300-14984
Floyd's Arco	RF304-13042
Gene Luongo Arco	RF304-13044

Name	Case No.
George and Sons Gulf	RF300-15272
Guy Cuthrell's Gulf Station	RF300-14851
Hammond Country Store	RF300-14783
Jordan's Grocery	RF300-14942
Joseph Mulligan Gasoline	RF300-14790
Kearney National, Inc	RF300-20107
Lamar Davis Gulf	RF300-14848
Leighow Oil Co	RF304-3768
Matador Gulf	RF300-14766
Maxfield's Garage	RF300-14765
McClure's Gulf	RF300-14769
Nicklow's Gulf	RF300-14795
Price Service Center	RF304-3751
Pyramid Supply, Inc	RF326-197
Ron Cook Tire	RF321-14043
Rondeau's Service Station	RF304-3754
Roseboro Gulf	RF300-14856
Shannon Bros. Enterprises, Inc	RF300-14772
Studies Service Station	RF304-3749
T.E. Hinson Gulf	RF300-14940
Tiger Oil & Heating Co	RF300-18705
Ward Foods, Inc	RF300-18712

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 17, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-17424 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

Proposed Decisions and Orders During the Week of July 6 Through July 10, 1992

During the week of July 6 through July 10, 1992, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: July 17, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Bellman Oil Co., Inc., Bremen, Indiana, LEE-0041 Reporting Requirements

Bellman Oil Co., Inc., (Bellman) filed an Application for Exception from the provision of filing Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The Exception request, if granted, would permit Bellman to be exempted from filing Form EIA-782B. On July 9, 1992, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

Shearon, Inc., Harvard, Illinois, LEE-0043 Reporting Requirements

Shearon, Inc., (Shearon) filed an Application for Exception from the provision of filing Form EIA-863, entitled "Petroleum Product Sales Identification Survey." The exception request, if granted, would permit Shearon to be exempted from filing Form EIA-863. On July 6, 1992, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 92-17412 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,064,798, plus accrued interest, in alleged crude oil and refined petroleum product violation amounts obtained by the DOE under the terms of a settlement agreement entered into with Oasis Petroleum Corporation, Case No. LEF-0007. The OHA has determined that 16% of the funds obtained from Oasis, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, and that the remaining 84%, plus accrued interest, will be distributed to those injured as a result of Oasis' alleged refined petroleum product allocation violation.

DATE AND ADDRESS: Applications for Refund to either the crude oil or refined product pool must be filed in duplicate, addressed to "Subpart V Crude Oil Overcharge Refunds" or "Oasis Special Refund Proceeding" as appropriate, and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applicantions to the crude oil pool must be postmarked by June 30, 1994. Applications to the refined product pool should display a prominent reference to case number "LEF-0007" and be postmarked by December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,064,798, plus accrued interest, obtained by the DOE under the terms of

a settlement agreement entered into with Oasis Petroleum Corporation on November 20, 1989. The funds were paid by Oasis towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil and gasoline during the period January 1, 1978 through January 27, 1981.

The OHA will divide the Oasis settlement agreement fund into two different refund pools based on alleged crude oil overcharges and alleged refined petroleum product allocation violations.

For the crude oil refund pool (16% of the settlement agreement fund, plus accrued interest), the OHA has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986 (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

With respect to the refined product refund pool (84% of the settlement agreement fund, plus accrued interest), the OHA has determined to distribute these funds in two stages. In the first stage, we will accept claims from those injured as a result of Oasis' alleged allocation violation violations. The specific requirements which an applicant must meet in order to receive a refund are set out in Section V of the Decision. A claimant who meets these specific requirements will be eligible to receive refunds based on the demonstrated injury resulting from Oasis' failure to furnish gasoline that it was obliged to supply to the claimant.

If any funds remains in the refined product refund pool after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund to the crude oil pool must be postmarked by June 30, 1994. Any claimant which has already filed a subpart V crude oil refund application should not file another application, as the prior application will be deemed to be filed in this crude oil refund proceeding. Purchasers of gasoline from Research Fuels, Inc. during the period November 1, 1977 to October 31, 1978, who may have been injured as a result of Oasis' alleged allocation violations, may file Applications for Refund from the refined product pool. The refined product refund applications must be postmarked by December 31, 1992. Instructions for the completion of crude oil and refined product refund applications are set forth in the Decision that immediately follows this notice. Crude oil and refined product refund claims should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: July 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

July 15, 1992.

Name of Firm: Oasis Petroleum Corporation.

Date of Filing: January 5, 1990.

Case Number: LEF–0007.

On January 5, 1990, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Oasis Petroleum Corporation (Oasis) remitted to the DOE pursuant to a November 20, 1989 settlement agreement between the DOE and Oasis. Oasis has remitted $1,064,798 pursuant to the settlement, to which $89,619 in interest has accrued as of May 29, 1992. In accordance with the procedural regulations codified at 10 CFR part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were resolved by the Oasis settlement agreement. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

I. Background

The ERA issued two Proposed Remedial Orders (PROs) to Oasis—one in 1986 and another in 1988. The PROs alleged that Oasis had violated the Federal petroleum price and allocation regulations. During the time of the alleged violations, Oasis was a corporation engaged, *inter alia*, in the purchasing and selling of motor gasoline and crude oil. In 1986, Oasis filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California. On November 20, 1989, the bankruptcy court approved a settlement agreement entered into by Oasis' Trustee and the DOE. In re Oasis Petroleum Corporation, No. LA 86–01225–AG (Bankr. C.D. Cal. 1989). Pursuant to the settlement, the Oasis bankruptcy estate remitted $200,000 to the DOE, after which the two PROs pending against Oasis were dismissed. See Letter from Thomas O. Mann, Deputy Director, OHA, to Emily Somers and Thomas B. DePriest, ERA, and Mark N. Savit, Doyle & Savit (Dec. 20, 1989). In addition, the DOE was allowed a general unsecured claim of $10,500,000 in the bankruptcy estate. The agreement stipulates that any monies received are to be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07, and subpart V. Oasis has since remitted additional payments of $491,365 and $373,433. Thus, to date, Oasis has remitted $1,064,798, to which $89,619 in interest has accrued as of May 29, 1992, making available a total of $1,154,417 (the Oasis settlement agreement fund) for distribution through subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–07, Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Oasis settlement agreement fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Division of the Oasis Settlement Agreement Fund

The first PRO issued by the ERA alleged that Oasis has resold crude oil at a price in excess of its permissible average markup. The ERA determined that these violations amounted to $1,915,564. In the second PRO the ERA alleged that Oasis had sold allocated gasoline to parties without allocation rights, and thereby diverted gasoline in violation of federal allocation regulations. Oasis was found in the PRO to have profited from its diversion in the amount of $10,139,702. Thus, the violations alleged in the two PROs total $12,055,266, with alleged crude oil violations approximating 16% of the total, and alleged allocation violations making up the other 84%. Accordingly, we believe that it is most equitable to direct 16% of the Oasis

settlement agreement fund, plus accrued interest, into a crude oil refund pool. We will direct the remaining 84% of the fund, plus accrued interest, into a refined product refund pool.

IV. The Proposed Decision and Order and Analysis of Comments Received

On February 4, 1992, OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the Oasis settlement agreement fund. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 57 FR 4200 (February 4, 1992). In addition, OHA mailed the PD&O to many interested parties. Only one written comment was filed regarding our proposed refund procedures. This comment focused on the requirement that claimants in this proceeding demonstrate the existence of a supplier/purchaser relationship with Research Fuels, Inc. (RFI), the evaluation of affirmative defenses, and the prorating of allocation of refunds.[1]

A. Supplier/Purchaser Relationship

In the PD&O we stated that 22 firms had been identified as being potentially injured by Oasis' alleged diversion of gasoline during the period August 3, 1979 to January 27, 1981. It was during this period that Oasis was under court order to supply gasoline to these firms, wholesale customers of RFI during the base period then in effect. See infra note 5.

Thus, the PD&O proposed requiring allocation claimants from the refined product refund pool to demonstrate the existence of a supplier/purchaser relationship with RFI during the base period. In addition, we proposed that claimants demonstrate that, during the period August 3, 1979 through January 27, 1981, Oasis failed to furnish gasoline that it was obliged under court order to supply to the claimant as a base period customer of RFI. The commentator requests that the claimants should instead demonstrate the existence of a supplier/purchaser relationship with RFI during the period in which injuries were alleged to have occurred, August 3, 1979 to January 27, 1981.

In Lucky Stores, Inc. 14 DOE ¶ 82,505 (1986), we found that "those wholesale purchasers which had purchased motor gasoline from RFI during the updated base period acquired a regulatory right to obtain gasoline based on their purchase volumes during the new base period." Effective with the August 3, 1979 court order, the obligation to supply that gasoline fell to Oasis. Accordingly, in order to demonstrate that it was entitled to be supplied by Oasis, we will require an allocation claimant in this proceeding to demonstrate that it purchased motor gasoline from RFI during the period November 1, 1977 to October 31, 1978.[2]

B. Affirmative Defenses

We stated in the PD&O that, in evaluating allocation claims, we will look at any affirmative defenses that Oasis may have had to the alleged allocation violation. The commentator agrees with our evaluation of affirmative defenses, so long as "they are subject to the same equitable principles and cases to which claims are subjected" and "are consistent with equity and are applied similarly to the other elements of a claim."

We have, in previous cases, considered a supplier's affirmative defenses to alleged allocation violations, and have done so consistent with the equitable principles of subpart V. A review of our grants of allocation claims demonstrates that in each case (i) the consent order firm and the applicant had a supplier/purchaser relationship under the relevant base period, (ii) the volumes reflected the applications of the supplier's allocation fraction to the purchaser's base period supply entitlement, (iii) the applicant demanded the volumes, (iv) the applicant complained to the agency about the allocation violation, and (v) evidence concerning any supplier defenses was not well developed.

Marathon Petroleum Co./Research Fuels, Inc. 19 DOE ¶ 85,575 at ¶ 89,056 (1989), *aff'd*, No. CA3–89–2983G, slip op. (N.D. Tex. Oct. 3, 1991), appeal docketed, No. 5–133 (Temp. Emer. Ct. App.) (Marathon/RFI). Thus, the absence of affirmative defenses is one among several factors we have considered in determining whether an allocation claim is "non-spurious." *Id.* at 89,056–57. We do not believe the comments submitted regarding affirmative defenses are in any way inconsistent with the principles expressed in our past evaluation of such defenses, and we intend to apply those same principles in this proceeding.

C. Distribution of Funds

In the PD&O we stated that, because the Oasis settlement agreement is less than Oasis' potential liability in those proceedings, we will prorate those allocation refunds that would otherwise be disproportionately large in relation to the settlement agreement fund. The commentator asks for clarification as to how prorating will be applied to individual claims and requests that any ratio used be applied equally to all claimants. The commentator also requests notice and an opportunity to comment on any method of prorating refunds which may be adopted in this proceeding.

As in past refund proceedings, we may find it necessary to prorate refunds should the total of all valid claims received exceed the amount available in the settlement agreement fund. See *e.g.*, Aztec Energy Company/Quickway Market, 13 DOE ¶ 85,326 (1985). However, we will not disburse any refunds until the deadline for applications has passed and we have determined the aggregate amount of valid claims submitted. If necessary, we will at that time fashion an appropriate method of prorating refunds. Thus, it is premature at this stage in the Oasis proceeding to make a final decision about the method, *vel non*, of prorating refunds. This is an equitable proceeding for restitution to injured parties. Any such determination will ultimately depend on a weighing and balancing of the equities presented.[3] If the commentator submits a claim on behalf of a refund applicant, it will have ample opportunity upon filing a claim to raise any arguments it may have on this issue.

V. Crude Oil Refund Procedures

A. Crude Oil Refund Policy

The portion of the Oasis settlement agreement monies in the crude oil pool will be distributed in accordance with DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement In re: The Department of Energy Stripper Well Exemption Litigation, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶90,509 (1986) (the Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be refunded to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a Notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This Notice was published at 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The April 10 Notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were

[1] See Letter from Jack P. Caolo to Thomas O. Mann, Deputy Director, OHA (March 4, 1992). Mr. Caolo is an attorney representing Lucky Stores, Inc., one of 22 wholesale purchasers previously identified as potentially injured by Oasis' alleged allocation violations. See Lucky Stores, Inc., 14 DOE ¶ 82,505 (1986).

[2] November 1, 1977 through October 31, 1978 was the base period in effect at the time of Oasis' alleged allocation violations, not July 1, 1977 through June 30, 1978 as stated in the PD&O. See 44 FR 26,172 (May 4, 1979).

[3] The commentator requests that all of the settlement fund "be paid to claimants as direct restitution up to 100% of each valid claim," before any portion of the fund is made available for distribution through the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. Proceedings established pursuant to Subpart V are equitable in nature and designed to provide restitution to injured parties. As such, the OHA is required to "take into account the desirability of resolving to the maximum extent practicable all outstanding claims." 10 CFR 205.282(e). Accordingly, the portion of the settlement fund ultimately distributed through PODRA will depend in part on the number of valid claims submitted in this proceeding and the aggregate value of those claims.

injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See City of Columbus, Georgia, 16 DOE ¶85,550 (1987). Additionally, we stated that crude oil refunds would be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period. The OHA has adopted the refund procedures outlined in the April 10 Notice in numerous cases. See, *e.g.*, Shell Oil Co., 17 DOE ¶85,204 (1988) (Shell); Mountain Fuel Supply Co., 14 DOE ¶85,475 (1986) (Mountain Fuel).

B. Refund Claims

We will adopt the DOE's standard procedures to distribute the crude oil portion of the Oasis settlement agreement fund. As mentioned above, 16% of the fund, plus accrued interest, is covered by the crude oil portion of this Proposed Decision. We have chosen to initially reserve twenty percent of the crude oil refund pool, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See Mountain Fuel, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the alleged violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h (1982). In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the OHA Report on Stripper Well Overcharges, 6 Fed. Energy Guidelines ¶90,507 (1985). See also Petroleum Overcharges Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil refund monies. *See Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶26,617 (1989); In re: Department of Energy Stripper Well Exemption Litigation, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶26,613 (1987).

As has been stated in prior decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. *See, e.g., A. Tarricone, Inc.*, 15 DOE ¶85,495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The deadline for filing an Application for Refund from the current (fifth) pool of funds is June 30, 1994. It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $.0008 per gallon. While we anticipate that applicants which filed their claims by June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds.

C. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information.

(1) Identifying information including the claimant's name, address, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[4] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

[4] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

D. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eight percent of the alleged crude oil overcharge amounts subject to this Proposed Decision, plus accrued interest, will be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

VI. Refined Product Refund Procedures

A. Allocation Claims

We will implement a two-stage refund procedure for the refined product portion of the Oasis settlement fund by which those injured as a result of Oasis' alleged allocation violations may submit Applications for Refund in the initial stage. As stated above, the ERA alleged that Oasis diverted gasoline in violation of federal allocation regulations by selling allocated gasoline to parties without allocation rights. In Lucky Stores, Inc., DOE ¶ 82,505 (1986), the OHA found that during the period August 3, 1979 through January 27, 1981, Oasis had an affirmative duty to supply gasoline to wholesale purchasers who had been supplied by Research Fuels, Inc. (RFI) during the period November 1, 1977 to October 31, 1978, pursuant to a court order issued by the United States District Court for the Northern District of Texas.[5] The OHA further found that RFI's wholesale customers probably incurred injury as a result of Oasis' alleged diversion of gasoline.

Therefore, we anticipate that we will receive claims based upon Oasis' alleged failure to furnish gasoline to RFI's wholesale customers. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as Office of Special Counsel, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as Mobil Oil Corp./Reynolds Industries, Inc., 17 DOE ¶ 85,608 (1988); Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 (1989 *aff'd, No. CA3–89–2983G, slip op. (N.D. Tex. Oct. 3, 1991), appeal docketed*, No. 5–133 (Temp. Emer. Ct. App.) (Marathon/RFI). These standards will require an allocation claimant to demonstrate that it purchased motor gasoline from RFI during the period November 1, 1977 to October 31, 1978 and the likelihood that Oasis failed to furnish gasoline that it was obliged to supply to the claimant from August 3, 1979 through January 27, 1981. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Oasis may have had to the alleged allocation violation. See Marathon/RFI. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of gasoline that it received from suppliers other than Oasis. Finally, since the Oasis settlement agreement reflects a negotiated compromise of the issues involved in the enforcement proceedings against Oasis and the settlement agreement amount is less than Oasis' potential liability in those proceedings, we may prorate refunds as discussed above in section IV, part C.

B. Refined Product Application Requirements

To apply for a refund from the Oasis refined product pool, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, address, taxpayer identification number, an indication whether the claimant is a corporation, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check; [6]

(2) The applicant's use(s) of the gasoline purchased from Oasis or RFI: e.g., retail gasoline station, petroleum jobber, petroleum refiner, consumer (end-user), cooperative, or public utility;

(3) Monthly schedules covering purchases of gasoline from RFI and any other supplier from which the applicant purchased gasoline during the period November 1, 1977 to October 31, 1978. Monthly schedules of purchases of gasoline from Oasis and any other supplier from which the applicant purchased gasoline during the period August 3, 1979 through January 27, 1981. The applicant should specify the source of this information. In calculating its purchase volumes, an applicant should use actual records from the period, if available. If these records are not available, the applicant may submit estimates of its petroleum purchases, but the estimation methodology must be reasonable and must be explained in detail;

(4) If the applicant was a direct purchaser from Oasis or RFI, it should provide its customer number. If the applicant was an indirect purchaser (e.g., it purchased gasoline from Oasis or RFI through another supplier), it should submit the name, address, and telephone number of its immediate supplier and should specify why it believes that the gasoline purchased was originally sold by Oasis or RFI;

(5) All relevant material necessary to support its claim in accordance with the requirements outlined above in section VI, part A;

(6) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(7) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Oasis refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(8) If the applicant was or is in any way affiliated with Oasis or RFI, an explanation of the nature of that affiliation;

(9) A statement as to whether the ownership of the applicant's firm changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale (e.g., sale of corporate stock, sale of company assets);

(10) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided;

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that

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[5] Oasis entered into an agreement with RFI on October 24, 1978, which attempted to transfer, from RFI to Oasis, allocation entitlements to gasoline supplies from Marathon Petroleum Company and Cities Service Corporation. On March 1, 1979, updated federal petroleum allocation regulations went into effect which obligated RFI to supply certain wholesale purchasers to which RFI had sold gasoline during the updated base period, July 1, 1977 through June 30, 1978. 44 FR 11,202 (February 28, 1979). Effective May 1, 1979, the ERA issued an Interim Final Rule which updated the base period to November 1, 1977 through October 31, 1978. 44 FR 26,712 (May 4, 1979); See 44 FR 42,549 (July 19, 1979) (interim final rule issued as final rule. (RFI claimed that the updated regulations entitled it to be supplied, by Marathon and Cities, the amount of gasoline that it had purchased from the two suppliers and resold to its wholesale customers during the updated base period. Oasis disputed this, contending that the 1978 agreement transferred to it the right to supply RFI's wholesale customers, and sought an injunction from the United States District Court for the Northern District of Texas to prevent RFI or the DOE from interfering with its rights under the agreement. The court issued an injunction on August 3, 1979, ordering Oasis to supply the wholesale customers. See Lucky Stores, Inc., 14 DOE ¶ 82,505 (1986).

[6] *See infra* note 4.

anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Oasis Special Refund Proceeding, Case No. LEF-0007." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than December 31, 1992, and sent to: Oasis Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

In addition, we are adopting the following procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services, consulting firms, accountants, and attorneys. See Texaco, Inc., 20 DOE ¶ 85.147 (1990). Each such filing service shall, contemporanously with its first filing in the Oasis proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use.[7] This statement should contain the following information: [8]

(1) A description of the procedures used to solicit refund applications in the Oasis proceeding and copies of any solicitation materials mailed to prospective Oasis applicants;

(2) A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

(3) A description of how the filing service obtains and verifies the information contained in refund applications;

(4) A description of the procedures used to forward refunds to its clients;

(5) A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service's procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Oasis proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourthly, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Finally, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this Decision and Order.

C. Distribution of Funds Remaining After First Stage

Any refined product funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Oasis settlement agreement escrow account that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil pool, remitted to the Department of Energy by the Oasis Petroleum Corporation bankruptcy estate pursuant to the Settlement Agreement dated November 20, 1989, may now be filed.

(2) All crude oil refund applications submitted pursuant to Paragraph (1) above must be postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall transfer 6.4% of the funds in the subaccount denominated "Oasis Petroleum Corporation" (Consent Order No. 940X00217Z) into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(4) The Director of Special Accounts and Payroll shall transfer 6.4% of the funds in the subaccount denominated "Oasis Petroleum Corporation" into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(5) The Director of Special Accounts and Payroll shall transfer 3.2% of the funds in the subaccount denominated "Oasis Petroleum Corporation" into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

(6) Applications for Refund from the refined product pool, remitted by the Oasis Petroleum Corporation bankruptcy estate pursuant to the Settlement Agreement, dated November 20, 1989, may now be filed.

(7) Applications for Refund from the refined product pool must be postmarked no later than December 31, 1992.

Dated: July 15, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-17413 Filed 7-22-92; 8:45 am]

BILLING CODE 6450-01-M

[7] This statement should be submitted under separate cover and reference the Oasis refund proceeding, Case No. LEF-0007.

[8] This information with regard to some filing services has already been requested and received by this Office. Therefore, any filing service that has had more than 10 Applications for Refund approved before the issuance of the Proposed Decision and Order in this proceeding (January 29, 1992) need not submit this information if it has already done so in another proceeding. Instead, such a filing service need only include a copy of the previous submission(s) responsive to items (1)-(5) and provide an update if its response to any of these questions has changed since it first submitted its information. However, in light of the importance of this information, it is prudent for all filing services to review their practices and inform the OHA of any alterations or improvements that may have been made.

ENVIRONMENTAL PROTECTION AGENCY

(FRL-4157-4)

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 24, 1992. To obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: Amendment to ICR for NPDES/State Sludge Management Monitoring Reports (0229.08). This ICR requests a revision of a currently approved collection.

Abstract: ICR 0229.08 amends the baseline NPDES Discharge Monitoring Report ICR (ICR 0229.06, OMB no. 2040–0004), incorporating into it the information requirements of the State Sludge Management Program (ICR 1237.03, OMB no. 2040–0128), whose clearance is due to expire on 07/31/92.

Described in this ICR are the sewage sludge monitoring, reporting and recordkeeping requirements imposed on treatment works handling domestic sewage. These requirements are included in NPDES or sludge-only permits. Under current regulations, NPDES permittees must submit effluent monitoring reports at least once a year. Sludge-only facilities must report monitoring data at a frequency determined by the permit writer, generally at least twice a year.

The required monitoring information usually includes the location and date of the effluent sampling, the name of the individual conducting the analyses, a description of the analytical techniques used, and the results of the analyses. The treatment works must maintain their monitoring information records for five years.

The present ICR also describes supplemental monitoring and reporting requirements associated with the 40 CFR part 501 regulations, which are due to be published later this Fiscal Year. Under the part 501 rule, permitting authorities may require additional information where necessary to protect human health and the environment. The Supplemental requirements will be determined by each permit writer and will often consist of requests for more frequent reporting or monitoring for additional pollutants.

EPA and the States use the information submitted in order to monitor compliance with national standards, to determine the need for enforcement, and to set appropriate permit conditions. On a larger scale, EPA uses the information for program management, policy development and reporting to Congress.

Burden Statement: The average burden associated with the Discharge Monitoring Report is 17.69 hours per response. This total includes time for searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. The average annual recordkeeping burden is 1.7 hours per recordkeeper.

Respondents: All facilities discharging wastewater.

Estimated No. of Respondents: 190,146.

Estimated Total Annual Burden on Respondents: 16,500,955 hours.

Frequency of Collection: Monthly, quarterly, semiannually, annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: July 17, 1992.

David Schwarz,

Acting Director for Regulatory Management Division.

[FR Doc. 92–17403 Filed 7–22–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; San Francisco/Naveria Interamericana Terminal Agreement., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement no.: 224–200375–001.

Title: San Francisco/Naviera Interamericana Terminal Agreement.

Parties: San Francisco Port Commission ("Port") Naviera Interamericana Navicana S.A. ("Naviera")

Synopsis: The amendment reflects Naviera's transfer of its operations from the Port's North Container Terminal to the Port's South Container Terminal and makes other non-substantive changes to the Agreement's provisions.

Agreement no.: 202–007680–082.

Title: American West African Freight Conference.

Parties: Joint Service of Societe Navale et Commerciale Delmas-Vieljeux and America-Africa-Europe Line GMBH d/b/a Delmas AAEL, Inc., Farrell Lines, Inc., Maersk Line, Societe Ivoirienne de Transport Maritime, Sitram, Torm West Africa Line, Westwind Africa Line, Wilhelmsen Lines A/S

Synopsis: The proposed amendment deletes the Azores, Canary Islands and Canada from the geographic scope of the Agreement. It also makes other technical changes to various Articles of the Agreement.

Dated: July 17, 1992.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–17337 Filed 7–22–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Family Assistance; Privacy Act of 1974; Computer Matching Program

Notice of intent to initiate an automated data matching program between the Internal Revenue Service (IRS) and the Administration for Children and Families (ACF), Office of Family Assistance (OFA).

AGENCY: Office of Family Assistance, ACF, DHHS.

ACTION: Publication of notice of intent to participate in an automated data matching program with IRS to comply with the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, as amended by Public Law 101–508.

SUMMARY: OFA announces its intention to participate in an automated data matching program that will allow the agency to obtain unearned income data from IRS return information. This information will be used by OFA's Division of Quality Control in verifying eligibility and payment amounts under the Aid to Families with Dependent Children (AFDC) program. A major benefit of the matching program is that it will provide an independent source of information for monitoring adherence to

AFDC income and resource requirements.

DATES: Comments from members of the public must be received by August 24, 1992. The effective date of the computer matching agreement between ACF and IRS will be 30 days after the date on which such agreement is transmitted to the Committee on Government Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget. The computer matching program established by the agreement will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

ADDRESSES: Comments should be submitted in writing to the Administration for Children and Families, Office of Family Assistance, Aerospace Building, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments received may be inspected by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Sean D. Hurley, Division of Quality Control, Office of Family Assistance, Administration for Children and Families, Aerospace Building—5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone Number: (202) 401–9296.

SUPPLEMENTARY INFORMATION: Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

This notice is being published to ensure that the public is aware that OFA intends to participate in an automated data matching program with IRS, and that OFA has formally requested IRS to participate in such a program, that will make unearned income data from IRS return information available to OFA for verifying eligibility for AFDC through the Quality Control (QC) system of the AFDC program.

The AFDC–QC program is designed to monitor and improve the management of the AFDC program administered by State agencies. A primary objective of the system is to measure, identify, and reduce the level of misspent AFDC funds as a result of erroneous eligibility and payment determinations. Information from the data matching program will be used in verifying adherence to the AFDC program income and resource limits.

The authority for collecting information for use in the Federal AFDC–QC review process is sections 402(a)(6) and 408 of the Social Security Act. (See section 8004 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239).

Proposed OFA participation in the data matching program is in accordance with: the Computer Matching and Privacy Protection Act of 1988 (the Computer Matching Act), Public Law 100–503, as amended by Public Law 101–508; OMB guidelines published in the **Federal Register** on June 19, 1989 at 54 FR 25818; and, section 6103(1)(7) of the Internal Revenue Code (IRC) of 1986, providing that the IRS is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs that provide, among other resources, AFDC benefits.

Pursuant to the law and OMB guidance, IRS published a notice in the **Federal Register** on July 5, 1989, at 54 FR 28149, announcing its intention to conduct a match with a number of Federal and State agencies, including the Federal agency administering the AFDC program (ACF).

The matching program will provide OFA a third party source of information for monitoring adherence to AFDC income and resource requirements. A data match with IRS return records can expose income and resources more difficult and costly to discover through other means. Federal OC will also be able to evaluate and confirm cases reported by the State as having "no IRS data available."

OFA will again publish a notice in the **Federal Register** when all procedural requirements, including the approval of the agreement by the HHS Data Integrity Board, have been fulfilled, to announce the implementation of the agreement and the effective and inclusive dates of the matching program. The notice will also respond to comments received from the public.

Dated: July 13, 1992.

Jason Turner,

Director, Office of Family Assistance.

[FR Doc. 92–17353 Filed 7–22–92; 8:45 am]

BILLING CODE 4130–01

Food and Drug Administration

[Docket No. 92D–0288]

Draft Nutrition Labeling Manual: A Guide for Developing and Using Data Bases; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft manual entitled "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" (Ref. 1). The draft manual is intended to aid companies and trade organizations in developing and using a data base for nutrition labeling that would meet the regulations proposed as a result of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Written comments by September 8, 1992.

ADDRESSES: Submit written requests for single copies of the draft manual "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" to the Office of Nutrition and Food Science (HFF–266), Food and Drug Administration, Rm. 10–40, 200 C St. SW., Washington, DC 20204. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft manual to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Nutrition Labeling Manual: A Guide for Developing and Using Data Bases" and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: James T. Tanner, Center for Food Safety and Applied Nutrition (HFF–266), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5364.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 2, 1973 (38 FR 20702), FDA promulgated regulations that required nutrition labeling in certain circumstances (21 CFR 101.9(a)). The agency took this action largely in response to recommendations of the 1969 White House Conference on Food, Nutrition, and Health.

In the **Federal Register** of July 19, 1990 (55 FR 29487), FDA published a proposed rule entitled "Food Labeling: Mandatory Status of Nutrition Labeling and Nutrient Content Revision" to amend its food labeling regulations to require nutrition labeling on most food products that are meaningful sources of nutrients. On November 8, 1990, the President signed into law the 1990 amendments (Pub. L. 101–535), which among other changes, amended the Federal Food, Drug, and Cosmetic Act to require nutrition labeling on most foods. Subsequently, FDA acted to modify its proposal of July 19, 1990, to reflect the requirements of the 1990 amendments by publishing a supplementary nutrition labeling proposal on November 27, 1991 (56 FR 60366).

This draft manual is intended to provide generic instructions on how to develop and use a data base in preparing nutrition labeling for a food product. FDA welcomes comments on how to make this draft manual more useful and beneficial to persons who wish to use data bases. The agency intends to revise and update this manual as newer or more extensive information is obtained.

II. Need for a Manual

Shortly after FDA adopted its nutrition labeling regulations in 1973, the agency recognized that some form of guidance was necessary to aid the food industry in developing label values that would comply with the new regulations. To meet this need, FDA prepared a manual entitled "Compliance Procedures for Nutrition Labeling" (Ref. 2) and made it available upon request.

The agency has nearly 20 years of experience assisting industry in the development of nutrition labeling information. This experience, together with the expansion of both mandatory and voluntary nutrition labeling of foods, led FDA to believe that an updated manual was needed. The guidance in the draft manual that FDA has prepared draws on the agency's experience in providing assistance in the development of valid analytical nutrient content values for product labeling.

The purpose of the draft manual is to assist the food industry in developing valid nutrition labeling for food products. A number of approaches may yield valid labels, depending upon one's definition of the term "valid." For the purpose of this draft manual, "valid" means that values in the nutrition labeling accurately portray the nutrient content based on analyses of the food within the limits prescribed by regulation.

III. Use of Data Bases

The 1973 regulations required nutrition labeling only for certain foods, those with added nutrients or for which a nutrition claim was made in either labeling or advertising. Some foods, such as fresh produce, were specifically exempted. FDA encouraged manufacturers, however, to voluntarily provide nutrition labeling on a wider variety of food products, including the exempt foods.

Labels of over 60 percent (on a dollar volume basis) of FDA-regulated foods contained nutrition information by 1989. Many foods regulated by the U.S. Department of Agriculture (USDA) also bore nutrition information in compliance with that agency's labeling policies. However, while manufacturers expressed interest in providing more nutrition information, they often cited labeling costs as a hindrance. One cost that concerned manufacturers was the cost of sampling and analyzing foods to provide an accurate analytical value for each nutrient. This cost was of special concern to small manufacturers and manufacturers of seasonal products or products with low sales volume. Growers and distributors of fresh produce also shared this concern.

Industry-wide data bases were suggested as a possible means of reducing the cost of developing nutrition labeling for individual companies. FDA, USDA, and the Federal Trade Commission (FTC) encouraged this concept in a notice published in the **Federal Register** of December 21, 1979 (44 FR 75990), describing the agencies' policies and intentions with respect to numerous food labeling issues. In that notice, FDA, while not agreeing to approve data bases, stated that it would work with industry to resolve any compliance problems that might arise for food labeled on the basis of a data base that the agency had accepted.

FDA set out its general policy on the use of data bases most recently in the final rule on the voluntary nutrition labeling of raw produce and fish (56 FR 60880 at 60884, November 27, 1991). In that document, the agency reiterated statements that it had made in the proposal in that proceeding (56 FR 30468 at 30474, July 2, 1991), and in the notice that it issued with USDA and FTC in 1979 (44 FR 75990 at 76003).

IV. Data Base Reliability and Selection

Expansion of mandatory nutrition labeling to nearly all foods regulated by FDA has heightened interest in the use of industry-wide data bases for some food products. Manufacturers of food products not currently labeled have expressed interest in using data available from other sources, for example, the open scientific literature, as the basis for nutrition labeling of their products.

A concern that FDA has had with the use of such sources, as well as with the use of existing data bases, is their reliability for compliance with nutrition labeling regulations. Nutrient data may be valid for some purposes and not for others. Data that were developed largely for determining average daily intakes, for example, generally serve that purpose well. However, the data usually have not been adequate to determine natural variability or for the development of a labeling value that is in compliance with the regulations.

Moreover, the data have been generated by different investigators using a variety of analytical methods. Some of the older methods are less reliable than current methods. Reference standards against which the accuracy of experimental analytical values can be measured have generally not been available.

The choice of a data source is the prerogative of the firm or organization that provides nutrition labeling information. The firm or organization needs to be judicious in this selection, however, to ensure that the product labeling is in compliance. FDA anticipates that the manual that it is developing will be of assistance in identifying data that are of a quality to provide an adequate basis for nutrition labeling.

V. Summary

FDA is making this draft manual available for public comment before issuing a final manual. If following the receipt of comments, the agency concludes that the draft manual, as revised, presents acceptable criteria for use in developing nutrition labeling, FDA will finalize the manual and will announce its availability in the **Federal Register.**

The manual will be useful to manufacturers in developing nutrition labeling. A person may follow the manual or may choose to use alternate

procedures even though they are not provided for in the manual. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This manual does not bind any person or the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may, on or before September 8, 1992, submit to the Dockets Management Branch (address above) written comments on the draft on the draft manual. FDA will consider these comments in determining whether further amendments to, or revisions of, the manual are warranted. Two copies of any comments should be submitted, except that individuals may submit one copy.

VI. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Division of Mathematics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, "FDA Nutrition Labeling Manual: A Guide for Developing and Using Data Bases," Food and Drug Administration, Washington, DC, 1992.

2. Division of Mathematics, Center for Food Safety and Applied Nutrition, Food and Drug Administration, "Compliance Procedures for Nutrition Labeling," Food and Drug Administration, Washington, DC, 1973.

Dated: July 17, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-17361 Filed 7-20-92; 3:54 pm]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96-511).

1. *Type of request:* Reinstatement;
Title of information collection: Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy;
Form number: HCFA-484;
Use: Medicare claims for home oxygen therapy must be supported by the attending physician's statement including the diagnosis, prescription details, and the results of testing to establish the extent of hypoxemia. Form HCFA-484 obtains all pertinent information and promotes national consistency in coverage determinations;
Frequency: Annually;
Respondents: Individuals/households, businesses/other for profit, and small businesses/organizations;
Estimated number of responses: 660,000;
Average hours per response: .25;
Total estimated burden hours: 165,000.

2. *Type of request:* Revision;
Title of information collection: Laboratory Personnel Report;
Form number: HCFA-209;
Use: This form is used to determine laboratory compliance with the personnel requirements for laboratory certification and recertification under the Clinical Laboratory Improvement Amendments (CLIA);
Frequency: Biennially;
Respondents: State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
Estimated number of responses: 100,000;
Average hours per response: .5;
Total estimated burden hours: 50,000.

3. *Type of request:* Revision;
Title of information collection: Statement of Deficiencies and Plan of Correction;
Form number: HCFA-2567;
Use: This form provides information regarding deficiencies noted during periodic facility and laboratory certification surveys. Information from this form is used to make decisions concerning certification and recertification of health care facilities participating in the Medicare/Medicaid programs and of laboratories regulated by CLIA;
Frequency: Annually;
Respondents: State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
Estimated number of responses: 200,000;
Average hours per response: 2;
Total estimated burden hours: 400,000.

4. *Type of request:* New;
Title of information collection: Certification Recommendation—CLIA Laboratory;
Form Number: HCFA-197;
Use: This form provides information that is used to make decisions concerning CLIA certification, recertification, and limitations of laboratory services;
Frequency: Biennially;
Respondents: State/local governments, businesses/other for profit, Federal agencies/employees, non-profit institutions, and small businesses/organizations;
Estimated number of responses: 100,000;
Average hours per response: .25;
Total estimated burden hours: 25,000.

5. *Type of request:* Revision;
Title of information collection: Post-Certification Revisit Report;
Form number: HCFA-2567b;
Use: This form provides a uniform format depicting action accomplished. It is used as a follow-up to detected deficiencies reported on Form HCFA-2567 and is used to make decisions concerning certification of health care facilities participating in Medicare/Medicaid programs and laboratories participating in CLIA;
Frequency: Biennially;
Respondents: Individuals/households, businesses/other for profit, and small businesses/organizations;
Estimated number of responses: 100,000;
Average hours per response: .17;
Total estimated burden hours: 17,000.

6. *Type of request:* Revision;
Title of information collection: Blood Bank Inspection Checklist and Report;
Form number: HCFA-282;
Use: This form is used by the State Agency to record data collected as a part of the survey and certification process to determine compliance with the requirements for blood bank services under CLIA;
Frequency: Biennially;
Respondents: State/local governments;
Estimated number of responses: 2,500;
Average hours per response: .5;
Total estimated burden hours: 1,250.

7. *Type of request:* Revision;
Title of information collection: Survey Report Form (CLIA);
Form number: HCFA-1557;
Use: This form is used by the State Agency to record data collected in order to determine compliance with CLIA. This information is needed for laboratory certification and recertification;
Frequency: Biennially;
Respondents: State/local governments;
Estimated number of responses: 100,000;

Average hours per response: .54;
Total estimated burden hours: 54,000.
Additional information or comments: Call the Reports Clearance Office on 410–966–2093 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: July 15, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 92–17332 Filed 7–22–92; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement for a Cooperative Agreement to a Professional Trade Association Representing Health Maintenance Organizations

The Bureau of Health Professions (BHPr) of the Health Resources and Services Administration (HRSA) announces acceptance of applications for funding of a Cooperative Agreement for fiscal year 1992 to a recognized professional trade association representing health maintenance organizations (HMOs) for the purpose of supporting a model minority education program. This activity will be supported under the authority of title III, section 301 of the Public Health Service Act (the Act).

Approximately $100,000 is available to fund one Cooperative Agreement in fiscal year 1992. The Cooperative Agreement will be awarded on a competitive basis for a project period of one year.

Background

The Health Resources and Services Administration (HRSA) and the Office of the Assistant Secretary for Health (OASH), Office of Minority Health (OMH) in the Department of Health and Human Services (the Department) have become aware of the low numbers of minority health administrators, especially African American Administrators, in health maintenance organizations (HMOs) in the United States. The few minority graduates of health services administration programs in schools of public health and of health administration programs outside schools of public health, usually schools of business/management, either find positions in other areas of the health care system or have not acquired the necessary knowledge, skills, and attitudes to accept an entry level position in an HMO. In response to this concern, the Department is proposing to develop and pilot test a model education program for minority, especially African American, entry level health administrators in HMOs. This project could serve as a demonstration of a practice oriented model of educating minority HMO health administrators which would involve the HMO management community in the education process and serve as an incentive to the academic community to become more practice oriented and increase the number of academic HMO management education tracks.

Purpose

The primary objective of this project is to develop a model practice-oriented education track, focusing upon the need for more and better educated entry-level or mid-level minority health administration graduates entering HMO management. A secondary objective would be to establish and strengthen a practice oriented linkage between HMO management practice and the health administration academic community.

To achieve this objective, the recipient is to plan and develop a Health Management Training Institute for Minorities in Health Maintenance Organizations, "the training program," in the Washington, DC metropolitan area. The Washington, DC area is specified because of the substantive involvement of Federal officials in developing the training program, proximity to Federal expertise, and scarce Federal resources for travel. The training program should initiate activities such as:

1. Establishment of an Advisory Board for the development and pilot testing of the training program, including HMO managers and minority HMO managers.

2. Formal analysis of the knowledge, skills and abilities/attitudes required of minority health managers working in HMOs.

3. Analysis of the pedagogical methods to be used to accomplish the previously developed educational objectives, e.g., didactic lectures, role playing, on-the-job training with an experienced mentor, etc.

4. Establishment of HMO training sites for experiential learning rotations in the Washington DC area.

5. Establishment of advisory, consultative or, if feasible, working relationships with accredited health administration programs in Washington DC, e.g., George Washington University and Howard University.

6. Recruitment of at least 12 Fellows for the initial implementation of the previously developed educational objectives and curriculum of the training program.

7. Development of relationships with HMOs willing to hire Fellows upon completion of the training.

8. During the development and implementation period of the training program, development of private sector support for continuation of the model training program.

9. Evaluation of the training program, with the development of (1) appropriate recommendations concerning continued iterations of the training program and (2) recommendations to academic health administration programs concerning practice oriented HMO management.

Federal Involvement

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement in the development of the details of the Cooperative Agreement.

Substantial Federal programmatic involvement will occur through Federal membership on the Advisory Board representing the Health Resources and Services Administration, including the Bureau of Health Professions, and the Office of Minority Health. The involvement primarily would be in the following areas:

- Participation in the identification of emerging health management practice issues in HMOs;
- Participation in the identification of special needs of minority populations using HMOs, and how this might be reflected in the education of minority health managers;
- Participation in the identification of appropriate consultation for conduct of the proposed project;
- Assistance in defining the educational objectives of the model training program;
- Assistance in defining the educational methods to most appropriately convey the knowledge, skills, and attitudes contained in the educational objectives;
- Assistance in ensuring appropriate linkages with academic institutions and appropriate professional associations in the Washington, DC area; and
- Participation in the review and selection of contracts and agreements developed in implementing the project.

Eligibility

Entities eligible to apply for funding under this Cooperative Agreement must:

1. Be a recognized professional association representing health maintenance organizations (HMOs), and
2. Be located in the Washington, DC metropolitan area.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Health People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The following criteria are proposed for review of applications for this program:

- The degree to which the proposal contains clearly stated, realistic, and achievable objectives;
- The extent to which the proposal includes an integrated methodology compatible with the scope of project objectives, including collaborative agreements with relevant institutions and professional associations;
- The administrative and management capability of the applicant to carry out the Cooperative Agreement; and
- The extent to which budget justifications are complete, appropriate, and cost-effective.

These review criteria are based on criteria established for the Bureau of Health Professions grant programs in fiscal year 1992.

Applications received will be reviewed by an *ad hoc* review panel using the criteria above for review guidance.

Application Requests

Eligible entities interested in receiving materials regarding this program should notify HRSA. Materials will be sent only to those entities making a request.

Requests for proposal instructions and other questions should be directed to: Mr. John R. Westcott, Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6880.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed related to health administration issues, please contact: Ronald B. Merrill, M.H.A., Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–6853, FAX: (301) 443–1164.

If additional programmatic information is needed related to minority issues, please contact: June Horner, Office of Minority Health/HRSA, PHS, Parklawn Building, room 14–48, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: (301) 443–2964.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060. The deadline date for receipt of applications is August 24, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: June 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–17365 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

Title II—HIV Care Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1992 funds have been awarded to States and Territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by title II of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, Public Law 101–381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–170.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $95,151,000 was made available for the title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control for the 24 months ending September 30, 1991, and a per capita income factor. Below is the distribution of funds by State.

State	Amount
Alabama	636,291
Alaska	100,000
Arizona	687,616
Arkansas	440,564
California	15,559,171
Colorado	832,808
Connecticut	915,334
D.C.	1,385,438
Delaware	173,168
Florida	9,856,630
Georgia	2,885,813
Hawaii	366,974
Idaho	100,000
Illinois	2,829,336
Indiana	728,781
Iowa	164,436
Kansas	256,907
Kentucky	406,244
Louisiana	1,672,504
Maine	136,527
Maryland	2,027,034
Massachusetts	1,793,707

State	Amount
Michigan	1,213,083
Minnesota	417,361
Mississippi	590,409
Missouri	1,330,744
Montana	100,000
Nebraska	117,188
Nevada	443,483
New Hampshire	104,655
New Jersey	4,711,438
New Mexico	254,732
New York	16,909,338
North Carolina	1,253,338
North Dakota	100,000
Ohio	1,373,305
Oklahoma	490,547
Oregon	658,551
Pennsylvania	2,536,697
Rhode Island	194,400
South Carolina	795,067
South Dakota	100,000
Tennessee	737,498
Texas	7,329,198
Utah	234,917
Vermont	100,000
Virginia	1,351,047
W. Virginia	153,234
Washington	1,322,995
Wisconsin	459,433
Wyoming	100,000
Puerto Rico	5,681,717
Guam	4,323
Virgin Islands	27,019

Eligibility Criteria

In order to receive funding under title II, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuum of health care coverage, submit a plan to the Secretary that demonstrates that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health care coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance; and that information concerning such criteria will be made available to the public.
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under title II; and
- The State will ensure that grant funds are not utilized to make payments for any items or services to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant dollars to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private, health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1992 title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

It has been determined that the title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: July 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-17324 Filed 7-22-92; 8:45 am]

BILLING CODE 4160-15-M

Title I—HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1992 funds have been awarded to 18 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–170.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $119,426,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 18 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control (CDC) as of March 31, 1991. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 18 EMf

EMA	Total awards
Atlanta, GA	3,111,666
Baltimore, MD	1,898,561
Boston, MA	2,823,768
Chicago, IL	4,327,603
Dallas, TX	3,119,688
District of Columbia	5,127,184
Ft. Lauderdale, FL	3,065,827
Houston, TX	5,803,011
Hudson Co., NJ	2,181,853
Los Angeles, CA	9,788,087
Miami, FL	5,923,065
Newark, NJ	5,363,563
New York, NY	35,894,688
Oakland, CA	2,123,466
Philadelphia, PA	3,571,035
San Diego, CA	2,778,724
San Francisco, CA	18,944,229
San Juan, PR	3,579,982

Eligible Grantees

Metropolitan areas which were eligible for grant awards under title I were those areas for which, as of March 31, 1991, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under title III of the CARE Act; and the lead agency of any HRSA adult and pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that received title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and
- HIV-related inpatient case management services that prevent unnecessary hospitalization or that

expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443-6745.

Executive Order 12372

Grants awarded for the title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: July 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-17323 Filed 7-22-92; 8:45 am]

BILLING CODE 4160-15-M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1992

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1992, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 7⅜ percent. Using the regulatory formula (45 CFR 126.13)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of the 91-day U.S. Treasury bills for the preceding calendar quarter (3.78 percent), and rounding the result 7.278 percent) upward to the nearest ⅛ percent (7⅜ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending September 30, 1992, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9⅛ percent for the quarter ending December 31, 1991; 8¼ percent for the quarter ending March 31, 1992; and 7⅝ percent for the quarter ending June 30, 1992.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 7⅜ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.78 percent); adding 3.50 percent (7.28 percent) and rounding that figure to the next higher one-eighth of one percent (7⅜ percent).

3. For fixed rate loans executed during the period of July 1, 1992 through September 30, 1992, and for variable rate loans executed on or after October 22, 1985, the interest rate is 6⅞ percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.78 percent); adding 3.0 percent (6.78 percent) and rounding that figure to the next higher one-eighth of one percent (6⅞ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-17322 Filed 7-22-92; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 9136, March 16, 1992) is being amended to reflect the current functions assigned to the Health Resources and Services Administration (HB).

Under Chapter HB, amend the functional statements for the following sections:

Section HB-00, Mission

The Health Resources and Services Administration (HRSA) provides leadership and direction to programs and activities designed to improve the health services for all people of the United States and to assist in the development of health care systems which are adequately financed, comprehensive, interrelated and responsive to the needs of individuals and families in all levels of society. Specifically: (1) Provides leadership and support efforts designed to integrate health services delivery programs with public and private health financing programs; (2) administers the health services categorical grants and formula grant-supported programs; (3) provides or arranges for personal health services, including both hospital and out-patient care to designated beneficiaries; (4) provides technical assistance for modernizing or replacing health care facilities; (5) provides leadership to improve the education, training, distribution, supply, use, and quality of the Nation's health personnel; and (6) provides advice and support to the Assistant Secretary for Health in the formulation of health policies.

Section HB-10, Organization

HRSA is directed by an Administrator who is responsible to the Assistant Secretary for Health. It consists of the following major components:

(1) Office of the Administrator (HBA):

(2) Bureau of Health Resources Development (HBB);
(3) Bureau of Primary Health Care (HBC);
(4) Maternal and Child Health Bureau (HBM); and
(5) Bureau of Health Professions (HBP).

Section HB-20, Functions

Immediate Office of the Administrator (HBA1)

(1) Provides leadership and direction to the programs and activities of the Health Resources and Services Administration;
(2) Advises the Assistant Secretary for Health on policy matters concerning the Agency's programs and activities; and
(3) Coordinates the Agency's international health activities.

Office of Equal Opportunity and Civil Rights (HBA12)

The Office of Equal Opportunity and Civil Rights directs, coordinates, develops, and administers the Health Resources and Services Administration (HRSA) equal opportunity and civil rights programs. Specifically: (1) Provides advice, counsel, and recommendations to the Administrator and other HRSA officials on equal opportunity, civil rights, and related concerns and responsibilities, and represents HRSA in dealing with Federal and non-Federal agencies and organizations on a wide range of equal opportunity, civil rights, and related functions; (2) administers affirmative action programs designed to ensure equality of opportunity in employment; (3) applies Department of Health and Human Services' policies for delivery of HRSA services for groups and individuals, including minorities, women, the handicapped, and the aged; (4) manages the system of processing, adjudicating, and resolving complaints of employment discrimination, including preparation of final Agency decisions; (5) manges the complaints system for Commissioned Corps personnel under provisions of Public Health Service Personnel Instruction 6, which requires investigation, preparation of investigative files, and issuance of proposed dispositions; (6) develops and directs implementation of the requirements of Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and the Americans With Disabilities Act, as they apply to recipients of HRSA funds; (7) promotes the awarding of contracts under Section 8(a) of the Small Business Act, which pertains to contracts with small businesses owned by minorities and women; (8) participates in the formulation of HRSA's goals, policies, priorities, and strategies, particularly as they affect professional organizations and institutions of higher education (medical, public health, etc.) involved in or concerned with the delivery of health services to minorities; (9) performs liaison and monitoring to assess and ensure equity and non-discrimination in the application for HRSA's programs to its minority constituencies; (10) provides technical assistance and guidance on the development of education and training programs on equal opportunity and Civil Rights regulations, philosophy, principles, and practices for all HRSA employees, especially managers, supervisors, and counselors; and (11) coordinates its activities with those of the Office of Equal Employment Opportunity and the Civil Rights Staff, Office of the Assistant Secretary for Health.

Office of Rural Health Policy (HBA13)

Serves as a focal point within the Department and as a principal source of advice to the Secretary for coordinating nationwide efforts to strengthen and improve the delivery of health services to populations in rural areas. Specifically: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health; (4) stimulates and coordinates interaction on rural health activities and programs, both within the Department (particularly with the Health Care Financing Administration) and with other Federal agencies, such as the Veterans Administration, the Department of Agriculture, the Department of Defense, and the Department of Transportation; (5) supports rural health center research across the country and keeps informed of research and demonstration projects funded by States and foundations in the field of rural health care delivery; (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates responses to inquiries from congressional and private section sources related tot rural health; (8) advises the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under Titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas; (9) oversees compliance by the Health Care Financing Administration (HCFR) with the requirement that rural hospital impact analyses are developed whenever proposed HCFA regulations might have a significant impact on a substantial number of small rural hospitals; (10) oversees compliance by HCFA with the requirement that 10 percent of its research and demonstration budget is used for rural projects; (11) supports specialized rural programs on minority health, mental health, and agricultural health and safety; (12) plans and manages a nationwide grant program which provides health outreach services in rural areas; and (13) plans and manages a program of grants to States to initiate and expand offices of rural health.

AIDS Program Office (HBA14)

Serves as the Agency's focal point for AIDS Programs and activities. Specifically: (1) Coordinates all AIDS-related activities within the Agency; (2) advises the Administrator on policy, clinical, and educational issues pertaining to the administration of HRSA's AIDS programs; (3) keeps the Administrator informed of any difficulties arising either within or outside of HRSA, that might adversely affect the Agency's ability to carry out its AIDS responsibilities; (4) coordinates the formulation of an overall strategy and policy for the HRSA AIDS programs; (5) working with the Office of Planning, Evaluation and Legislation, coordinates the preparation of HRSA's AIDS-related programmatic, budgetary, and legislative proposals, including the preparation of testimony and budgetary information to be presented to the Congress; (6) monitors and analyzes AIDS-related policy and legislative developments, both within and outside the Department, for their potential impact on HRSA's AIDS activities, and advises the Administrator on alternative courses of action for responding to such developments; (7) serving as the point of contact for the Agency, develops and coordinates working relationships and conducts specific joint activities among HRSA's Bureaus and with outside organizations, including other Public Health Service (PHS) and Departmental components and including the PHS Regional Offices to assure optimum

interaction on related AIDS activities and to minimize duplication and overlap; (8) reviews AIDS-related program activities to determine their consistency with established policy, delegated authority, and assigned responsibilities; (9) coordinates HRSA's comments on AIDS-related reports, position papers, legislative proposals, etc., prepared outside the Agency; (10) coordinates responses to requests for information received from other OPDIVs of the Department and from outside the Department; (11) coordinates responses to incoming correspondence that concern AIDS-related issues involving more than one HRSA Bureau; (12) represents the Agency and the Department at AIDS-related meetings, conferences, task forces, or other gatherings for the purposes of dispensing or gathering information relevant to the conduct of HRSA's AIDS programs; and (13) plans and carries out special AIDS-related assignments for the Administrator.

Office of Minority Health (HBA15)

Serves as the principal advisor and coordinator to the Health Resources and Services Administration (HRSA) for health program activities that address the special needs and problems of minority and disadvantaged populations. Specifically, in coordination with the Office of the Administrator and HRSA bureaus: (1) Establishes short-term and long-range objectives for HRSA health activities addressing minority and disadvantaged populations; (2) develops reporting and monitoring requirements for those objectives; (3) participates in the organization and the planning of specific activities to meet minority health needs and monitors the HRSA budget to assure an appropriate share of funds in devoted to minority health problems; (4) provides ongoing technical assistance to the Agency, Department, and other Federal agencies, other Federal, State, and local programs, and works closely with public and private sectors to assure minority health issues are addressed; (5) serves as a resource in the promotion, investigation, development, and implementation of innovative health care models culturally unique to minority populations; (6) monitors program/project reviews and their strategies to improve the availability and accessibility of health professionals to minority communities; (7) participates in conferences on minority health; (8) assures that steps are taken to improve data sources and to integrate data systems reflecting minority and disadvantaged populations; (9) monitors and facilitates research in and fosters public awareness of research in factors affecting minority health; (10) oversees communications between HRSA and higher levels of Government on all matters that involve minority health; and (11) participates in the focus of activities and objectives in assuring equity in access to resources and health careers for minority women and the disadvantaged.

Office of Public Health Practice (HBA16)

Serves as the Agency's focal point on efforts to strengthen the practice of public health in the Nation, as it pertains to the HRSA mission. Specifically: (1) Collects and analyzes information regarding the assessment, policy development and assurance of public health services; (2) provides Agency managers with input on programs which impact on public health practice; (3) develops and implements plans to enhance public health practice through the Agency strategic plan, the program planning, budgeting and evaluation process, and other agency and PHS methods; (4) assists the Office of the Administrator on all public health practice communications with higher levels of the Department and coordinates responses to inquires from Congressional and private sector sources on matters related to public health practice; (5) develops and coordinates grants, contracts, and agreements for public health practice activities; (6) works with State and local governments, private associations, foundations, schools of public health and preventive medicine, and other organizations to focus attention on and to promote solutions to problems which may impair the delivery of public health services, especially as they affect comprehensive primary care to disadvantage populations; (7) promotes research to improve the effectiveness, efficiency and public acceptance of public health services; (8) develops and supports specialized programs which enhance the practice of public health; and (9) collaborates public health practice issues with the other Federal agencies.

Office of Policy Coordination (HBA3)

Under the direction of an Associate Administrator for Policy Coordination who is a member of the Administrator's immediate staff: (1) Advises the Administrator and, upon his direction, other key Health Resources and Services Administration officials, in the identification and, when appropriate, resolution of program policy issues, initiatives, and problems; (2) performs the secretariat functions for the Administrator in his role as Chairperson of the Health Resources and Services Administration Executive Management Team; (3) plans, organizes, and directs the Executive Secretariat of the Agency, with primary responsibility for preparation and management of written communications to and from the Administrator; (4) serves as the Administrator's primary staff advisor and coordination unit regarding intergovernmental affairs and regional operations; (5) coordinates the preparation of proposed rules and regulations relating to HRSA programs, and coordinates HRSA review and comment on other Public Health Service and Department of Health and Human Services regulations that may affect HRSA programs; and (6) oversees and coordinates the committee management system of the Agency.

Office of Operations and Management (HBA4)

Under the direction of the Associate Administrator for Operations and Management who is a member of the Administrator's immediate staff: (1) Provides Agency-wide leadership, program direction, and coordination of all phases of management; (2) provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (3) plans, directs, and coordinates the Agency's activities in the areas of administrative management, financial management, personnel management, debt management, manpower management, grants and contracts management, procurement, real and personal property accountability and management, and administrative services; (4) coordinates the implementation of the Freedom of Information Act for the Agency; (5) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; and (6) directs the Equal Employment Opportunity activities for the Office of the Administrator.

Office of Communications (HBA5)

Under the direction of the Associate Administrator for Communications, who is a member of the Administrator's immediate staff: (1) Provides leadership and general policy and program direction for, and conducts and coordinates communications and public affairs activities of the Health Resources and Services Administration; (2) provides communications and public affairs expertise and staff advice and support to the Administrator in program and policy formulations and execution

consistent with policy direction established by the Assistant Secretary for Public Affairs; (3) develops and implements policies related to external media relations and internal employee communications; (4) establishes and implements procedures for the development, review, processing, quality control, and dissemination of Agency communications materials; (5) serves as Communications and Public Affairs Officer for the Agency, including the establishment and maintenance of productive relationships with the communications media; (6) provides central communications services to all Agency programs; and (7) serves as focal point for coordination of Agency communications activities with those of other health agencies within the Department of Health and Human Services and with regional, State, local, voluntary, and professional organizations.

Office of Planning, Evaluation and Legislation (HBA6)

Under the direction of the Associate Administrator for Planning, Evaluation and Legislation, who is a member of the Administrator's immediate staff: (1) Serves as the Administrator's primary staff element and principal source of advice on program planning, program evaluation, and legislative affairs; (2) develops, in collaboration with financial management staff, the long-range program and financial plan for the Agency; (3) oversees, in coordination with the Office of the Assistant Secretary for Health, communications between HRSA and higher levels of the Department on all matters that involve long-range plans, evaluations of program performance, or legislative affairs; (4) develops long-range goals, objectives, and priorities for the Agency; (5) directs all activities within the Agency which compare the costs of the Agency's programs with their benefits, including the preparation and implementation of comprehensive program evaluation plans; (6) directs all the legislative affairs of HRSA, including the development of legislative proposals and a legislative program; (7) conducts policy analyses and develops policy positions in programmatic areas for HRSA; and (8) manages the Interagency Committee on Infant Mortality.

Office of Information Resources Management (HBA7)

(1) Provides leadership in the development, review and implementation of policies and procedures to promote improved information resources management capabilities and practices throughout HRSA; (2) develops and coordinates Agency-wide plans and budgets for the management of information technology and services, including centralized data processing, office automation, and telecommunications; (3) develops and recommends policies and procedures relating to information resources management and support services; (4) identifies and coordinates Agency-wide information needs and develops or coordinates with other Agency components the development of creative answers to these needs; (5) plans, manages, administers and coordinates the Agency-wide microcomputer network, including all required linkages to other networks inside and outside HRSA, including mainframe systems; (6) provides information support to the Office of the Administrator; (7) signs, develops, catalogues and manages data bases, information resources, including those data bases developed within the HRSA Bureaus, and the acquisition and use of external bases and information resources that support HRSA needs; (8) manages and coordinates state-of-the-art expertise for information science and technology; (9) provides consultation, technical advice and assistance and coordinates training in the use of ADP resources; (10) develops and coordinates the implementation of information security programs; (11) maintains liaison and coordinates information resources management with the HRSA Bureaus; (12) maintains liaison with HHS, PHS, other Federal agencies, States and professional organizations and associations concerning health information interests allied to the HRSA mission; and (13) reviews all HRSA requests for ADP resources, providing ADP clearance for all appropriately justified requests.

Bureau of Health Resources Development (HBB)

Administers Federal policy and programs pertaining to health care facilities, activities associated with organ donations, procurements, transplantation, trauma care, and a variety of program activities related to HIV infection and acquired immune deficiency syndrome (AIDS). This includes financial, capital, organizational, and physical matters. Specifically: (1) Provides national leadership in supporting, identifying, and interpreting national trends and issues of significance relative to the health status of persons with AIDS, and with HIV infections, including the provision of facilities and services for AIDS and AIDS-related patients, persons in need and provision of services to persons and families of low income; and administers block and discretionary grants, contracts, and funding arrangements designed to address those issues; (2) administers and coordinates AIDS-related grants programs of National significance; (3) administers grant, loan, loan guarantees and interest subsidy programs relating to the construction, modernization, conversion, and closure of health and health care organizations; (4) administers grants, cooperative agreements and contracts to support research, training, evaluation, and demonstration projects for trauma care; (5) develops long and short range program goals and objectives for health facilities, and for specific health promotional, organ transplantation, trauma care, and AIDS activities; (6) develops, conducts, and maintains a program of grants to organ procurement organizations (OPOs) and other non-profit private entities to increase the availability of kidneys, livers, hearts, lungs, and pancreases to recipients who have failure of these organs and who might die without transplantation; (7) serves as advisor to and coordinates activities with other Agency organizational elements, other Federal organizations within and outside the Department, State, and local bodies, professional and scientific organizations; (8) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (9) provides technical assistance to OPOs and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (10) administers HRSA's regional facility engineering and construction activities; (11) designs and implements special epidemiological and evaluation studies of the impact of the Bureau health care programs and of the characteristics of the population serviced; (12) evaluates models of health care delivery systems through grants, contacts, direct activities designs, and tests; (13) plans and develops collaborative efforts in the scientific aspects of Bureau programs with other PHS agencies, Federal departments, universities, and other scientific organizations; and (14) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of Bureau missions and objectives.

Bureau of Primary Health Care (HBC)

Serves as a national focus for efforts to assure the availability and delivery of health care services in medically underserved areas and to special service

populations. To this end, the Bureau, through its Central and Regional staffs:

(1) Assists States through program and clinical efforts to provide health care to underserved populations; (2) administers the Community Health Centers Program; (3) provides through project grants to State, local, voluntary, public, and private entities, funds to help them meet the health needs of special populations such as migrants, the homeless, and people with AIDS, substance abuse problems, and victims of black lung disease; (4) provides leadership and direction for the Bureau of Prisons Medical Program, the National Hansen's Disease Program, and support for Health Unit #1, the Federal Employees Occupational Health Program, the Coast Guard Medical Program, CHAMPUS Program, and the Cuban and Haitian Refugee Program; (5) administers a comprehensive health program for designated PHS beneficiaries, including active duty members of the PHS Commissioned Corps and the National Oceanic and Atmospheric Administration; and (6) administers the National Health Service Corps Program which assures accessibility of health care in underserved areas.

Maternal and Child Health Bureau (HBM)

Provides national leadership to develop, administer, direct, coordinate, monitor and support Federal policy and programs pertaining to health and related care for the Nation's mothers and children. Identifies and interprets trends and significant issues pertaining to the health and related care for the Nation's mothers and children by supporting activities that will: (1) Assure that all mothers and children have access to the highest quality health care; (2) reduce the need for inpatient and long-term services for mothers and children; (3) reduce infant mortality and incidence of preventable diseases and handicapping conditions among children; (4) assure the provision of services for children with special health care needs (5) support and promote the education of health professionals for leadership roles in addressing the health care needs of families and children; (6) support and promote the development of new knowledge for effective maternal and child health problem solving through research; (7) assure the provision of services in areas of special concern such as, mental retardation, sudden infant death syndrome, pediatric AIDS, genetic and metabolic disorders, hemophilia, childhood injury prevention, and adolescent pregnancy; and (8) provide national leadership in policy and program development and coordination, research, training, and resource development, and in building capacity of State programs for maternal and child health program development.

To this end, the Bureau, through its Central and Regional staffs: (a) assists the States in administering a program of Block Grants with emphasis on providing leadership and vision in defining and developing comprehensive systems of care, serving as a catalyst in linking resources of other Federal, State and local (public and private) resources to the Title V program; (b) administers the Federal set-aside for special projects of regional and national significance (SPRANS), with a renewed focus on supporting activities that improve State systems of care for all mothers and children; (c) provides consultation and technical assistance to the States in strengthening the maternal and child health (MCH) management infrastructure, especially in the areas of planning and accountability; (d) facilitates and maintains effective collaborative relationships with other Federal components that have child assistance program responsibilities, especially with those programs authorized under Title XIX of the Social Security Act, and Title X of the Public Health Service Act, and activities supported by the Administration for Children and Families, the Department of Agriculture, and the Department of Education; (e) implements in concert with other Federal programs and organizations, initiatives aimed at developing and maintaining effective surveillance/data systems and informing the public and the Congress on the state of health care delivery and the health status of mothers, children, and families; and (f) administers special programs such as Healthy Start to assure their effectiveness and coordination with Federal, State, local and private activities.

Bureau of Health Professions (HBP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. To this end, the Bureau: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization strategies; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nations health personnel production systems; (3) proposes new or modification of existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests, and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for assuring equity in access to health services and health careers for the disadvantaged; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and PHS Regional Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Regional Office staff; (10) coordinates with the programs of other agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems; (13) administers the National Vaccine Injury Compensation Program; and (14) serves as the PHS focal point for health professions quality assurance and risk management development efforts.

Functional Statements for Divisions

All division functional statements remain in effect as approved prior to this clarification.

Section HB–30, Order of Succession

During the absence or disability of the Administrator or in the event of a vacancy in that office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession. The order of succession will be:

(1) Deputy Administrator;
(2) Associate Administrator for Operations and Management;

(3) Associate Administrator for Planning, Evaluation and Legislation;
(4) Associate Administrator for Policy Coordination;
(5) Director, Bureau of Primary Health Care;
(6) Director, Bureau of Health Professions;
(7) Director, Bureau of Health Resources Development; and
(8) Director, Maternal and Child Health Bureau.

Section HB–40, Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: July 13, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–17333 Filed 7–22–92; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Reopening of Comment Period on Draft Recovery Plan for the Northern Spotted Owl

AGENCY: Department of the Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: The Department of the Interior reopens the comment period for public review of a draft recovery plan for the northern spotted owl. This species occurs in forested habitats from southern British Columbia, Canada, through western Washington, western Oregon, and northwestern California. The Department solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 13, 1992, to be considered during preparation of a final plan.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Northern Spotted Owl Recovery Team, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR, 97232–4181 (telephone 503/231–6238). Written comments and materials regarding the plan should be directed to the same address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Knowles, Associate Deputy Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (Telephone 202/208–6254), or Mr. Marvin Plenert, Regional Director, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232 (Telephone 503/231–6118).

SUPPLEMENTARY INFORMATION:

Background

A primary goal of the Endangered Species Act of 1973 (Act) is the recovery of endangered and threatened species so that they are again secure, self-sustaining members of their ecosystems. The Act requires preparation of a recovery plan to help guide recovery efforts for any listed species likely to benefit from such a plan. A recovery plan describes actions considered necessary to conserve a species, establishes criteria for downlisting or delisting, and estimates time and cost for implementing recovery measures.

Section 4(f) of the Act, as amended in 1988, (16 U.S.C. 1531 *et seq.*), requires that public notice and an opportunity for public review and comment be provided during development of a recovery plan. All information presented during a public comment period must be considered prior to approval of a new or revised recovery plan. Federal agencies must also take these comments into account in the course of implementing an approved recovery plan.

The northern spotted owl (*Strix occidentalis caurina*) occurs in southern British Columbia, Canada; western Washington; western Oregon; and northwest California. Within its range, the owl demonstrates an affinity for older forested habitat. Evidence of significant reduction and fragmentation of suitable owl habitat and of concomitant decline in owl populations have led to concern for its continued survival. A final rule to list the owl as a threatened species was published on June 26, 1990 (55 FR 26114). Details regarding the evidence upon which the listing was based are available in that publication.

On February 15, 1991, a recovery team was appointed and given the charge of preparing a recovery plan for the owl. The team is multidisciplinary in composition, and includes biologists, foresters, economists, attorneys, individuals representing concerned Federal agencies, and representatives of the Governors of the three States involved. A draft recovery plan prepared by the team was made available for public review on May 15, 1992. At that time, a comment period was announced, to end on July 13, 1992. In response to several requests submitted during the initial comment period, a further opportunity for public review and comment is now provided. The new comment period closes on August 13, 1992.

Public Comments Solicited

The Department solicits written comments on the draft northern spotted owl recovery plan. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Manuel Lujan, Jr.,

Secretary.

[FR Doc. 92–17421 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AZ–020–00–4332–11; AZA–25486,25487,25488,25489,25490,25496]

Intent To Prepare Two Wilderness Management Plans and Associated Environmental Documents and Invitation to Participate in the Identification of Issues; Phoenix District Office, Lower Gila Resource Area, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare wilderness management plans and environmental documents.

SUMMARY: Notice is hereby given of intent to prepare two wilderness management plans. This notice also constitutes the scoping notice required by the National Environmental Policy Act (40 CFR 1501.7).

(1) Description of proposed planning action: In accordance with Bureau of Land Management wilderness management policy guidance, two Wilderness Management Plans will be developed for six wilderness areas. One plan will address four Wilderness Areas: the Sierra Estrella, North Maricopa, South Maricopa and Table Top; the other plan will address the Woolsey Peak and Signal Mountain Wilderness Areas. An Environmental Assessment of the impacts of the proposed actions and alternatives will be prepared prior to approval of each plan.

The plans will define the management practices and actions to be used to maintain each area's wilderness

resources and will consider those issues and alternatives identified in a number of public scoping and work group meetings. The public is invited to participate in scoping meetings beginning in August 1992.

(2) Geographic areas involved: The six wilderness areas are in the Lower Sonoran Desert of Southwestern Arizona, located in southern Maricopa and western Pinal Counties, within a 45 mile radius of Gila Bend, Arizona.

(3) Types of issues anticipated: Wilderness values such as naturalness, solitude and primitive recreational opportunities must be preserved. Use of these areas for developed public recreation and education, research, wildlife management and legal private purposes will be assessed. Acceptable levels of these uses as well as primitive recreational activities will be identified. Actions necessary to administer the areas, e.g., signing, compliance enforcement, search and rescue, wild burro removal, and fire suppression will also be identified and acceptable levels of these activities determined.

(4) Disciplines to be represented in the preparation of the management plans will include: Wilderness, Recreation, Cultural, Wildlife, Range and Livestock Grazing, and Fire Management.

(5) The kind and extent of public participation opportunities to be provided:

Four public scoping meetings will be held to identify issues in managing the six areas. These will be held in Gila Bend, Casa Grande, Goodyear, and Phoenix, Arizona at the following times and locations:

Monday, August 24, 1992, 6 p.m.–9 p.m., Gila Bend Community Center, 202 Euclid Ave., Gila Bend, Arizona

Tuesday, August 25, 1992, 6 p.m.–9 p.m., Goodyear Community Center, 420 E. Loma Linda Blvd., Goodyear, Arizona

Wednesday, August 26, 1992, 6 p.m.–9 p.m., Casa Grande City Hall Council Chambers, 300 E. 4th Street, Casa Grande, Arizona

Thursday, August 27, 1992, 6 p.m.–9 p.m., Phoenix District Office Conference Room, Bureau of Land Management, 2015 W. Deer Valley Road, Phoenix, Arizona

Written comments regarding issues will also be accepted until September 15, 1992. Comments should be sent to: Bureau of Land Management, Phoenix District Office, Attn: John R. Christensen, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

In addition, two work groups, one for each Wilderness Planning Area, made up of interested public and agency personnel, will be formed to assist in the development of each plan. Participation in these groups will be solicited through mailings, news releases, and personal contacts.

Interested publics will be sent copies of the completed draft Wilderness Management Plans and will have 45 days in which to comment. Interest in this mailing will be solicited and a mailing list maintained at the Phoenix District Office.

ADDRESSES: The location and availability of documents relevant to these management plans will be available for public review at the Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: John C. Jamrog, Lower Gila Resource Area, Telephone 602–863–4464.

SUPPLEMENTARY INFORMATION: The plan which will cover the four ares mentioned, includes a combined total of 173,300 wilderness acres, while the Woolsey Peak and Signal Mountain Plan affects 76,250 acres of wilderness. The areas were added to the Wilderness Preservation System by Public Law 101–628, of November 28, 1990, known as the Arizona Desert Wilderness Act of 1990. The management and use of these areas is directed by this law as well as the Federal Land Policy and Management Act of 1976 and the Wilderness Act of 1964.

Descriptions of the North Maricopa, South Maricopa, Table Top, Woolsey Peak, and Signal Mountain Wilderness Areas can be found in the Lower Gila South, Final Wilderness Environmental Impact Statement of April 1987. The Sierra Estrella Wilderness is described in the Arizona Mohave Final Wilderness Environmental Impact Statement of February 1989. All six of these areas share similar natural characteristics and generally are subject to the same type and amounts of uses.

Dated: July 9, 1992.

David J. Miller,

Acting District Manager.

[FR Doc. 92–17317 Filed 7–22–92; 8:45 am]

BILLING CODE 4310-32-M

[OR–090–00–6310: G2–320]

Eugene District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council meeting.

SUMMARY: Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, August 28, beginning at 9 a.m. at the Eugene District Office, 2890 Chad Drive, Eugene, Oregon.

The agenda of the meeting will include: A discussion of the Draft Resource Management Plan and Preferred Alternative.

The meeting is open to the public. Interested persons may make oral statements to the council at the end of the meeting or file written statements for the council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of land Management, 1255 Pearl Street, Eugene, Oregon 97401 by the end of the business day on Wednesday, August 26, 1992. A time limit per person may be established by the District Manager.

Summary minutes of the council meeting will be maintained in the District office and will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Dated: July 14, 1992.

Ronald Kaufman,

District Manager.

[FR Doc. 92–17319 Filed 7–22–92; 8:45 am]

BILLING CODE 4310-33-M

[OR–050–4410–10:GP2–319]

Oregon, Prineville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Prineville District, Interior.

ACTION: Notice is hereby given that a meeting of the Prineville District Advisory Council will be held on August 27, 1992. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office located at 185 East Fourth Street, Prineville, Oregon 97754. The agenda will include the following items: (1) BLM 2015 reorganization plan; (2) Supplement to the Draft Lower Deschutes River Management Plan and Final Plan; (3) Rural-Urban Interface Plan; (4) Wild and Scenic River Planning; (5) Coordinated Resource Management Plans and (6) Deschutes/John Day Resource Management Plans.

Dated: July 10, 1992.

James L. Hancock,

District Manager, Prineville District Office.

[FR Doc. 92–17318 Filed 7–22–92; 8:45 am]

BILLING CODE 4310-33-M

Office of Surface Mining Reclamation and Enforcement

Contemplated Settlement of Case Involving Valid Existing Rights Determination Within the Wayne National Forest, Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of reopening and extension of period for submitting information.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) published a notice in the **Federal Register** on June 14, 1992 (52 FR 27269) which announced that the OSM and the United States Forest Service and the Belville Mining Company are contemplating a settlement of *Belville Mining Co.* v. *United States*, No. 90–244L (Cl. Ct.) (Belville III). To implement such a settlement, OSM would reconsider its Valid Existing Rights (VER) determination with respect to the McMullen property, located within the boundaries of the Wayne National Forest in Ohio and sought information on that issue. The notice provided an opportunity to submit additional information on the VER reconsideration. For further information, see the referenced **Federal Register** notice.

The deadline for receipt of information was July 20, 1992.

The deadline for receipt of additional information on this matter is extended until July 27, 1992.

DATES: OSM will accept written materials on all issues pertaining to the McMullen property until 5 p.m. Eastern time on July 27, 1992.

ADDRESSES: Hand deliver written materials to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 800 North Capitol Street, room 660, Washington, DC.

Written materials may be mailed to Administrative Record Room, 800 NC Rm. 660, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

Documents comprising the administrative record are available for public review and copying during regular business hours at the Administrative Record Room, room 660, 800 North Capitol Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Chief, Planning and Analysis Staff, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240 (202) 208–7851.

Dated: July 17, 1992.

Thomas E. Williams,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 92–17378 Filed 7–22–92; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–622 (Preliminary)]

Dry Film Photoresist From Japan

AGENCY: United States International Trade Commission.

ACTION: Institutional and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–622 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dry film photoresist, provided for in subheadings 3702.39.00, 3702.42.00. 3702.43.00, and 3702.44.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by August 31, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 16, 1992, by E.I. Du Pont de Nemours & Company, Wilmington, DE; Morton International, Inc., Tustin, CA; and Hercules Incorporated, Middleton, DE.

Participation in the investigation and public service list—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 6, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than August 5, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 11, 1992, a written brief

containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

By Order of the Commission.

Issued: July 17, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17375 Filed 7-22-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket Nos. 32095; 32096]

Burlington Northern Railroad Company—Trackage Rights Exemption—Chicago Central & Pacific Railroad Company; Chicago Central & Pacific Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN) and Chicago Central & Pacific Railroad Company (CCP) have filed notices of exemption under 49 CFR 1180.2(d)(7) for: (1) BN's acquisition from CCP of overhead trackage rights over approximately 12.24 miles of rail line between CCP milepost 168.96, near Portage, IL, and CCP milepost 181.20, in East Dubuque, IL, and over both CCP main tracks between CCP mileposts 181.20 and 181.48 and across CCP's two main track diamonds at milepost 181.88; and (2) CCP's acquisition from BN of overhead and local trackage rights (a) over approximately 12.24 miles of rail line between milepost 172.38, near Portage, and milepost 184.85, in East Dubuque, corresponding to CCP mileposts 168.96 and 181.20; and (b) over BN's interlocker and two main tracks between points corresponding to CCP mileposts 168.77 and 168.96. The involved lines are parallel main lines (and connecting track) now owned by CCP. BN is in the process of acquiring the westbound portion of these CCP lines between Portage and East Dubuque (and the indicated related trackage), over which BN is here prospectively granting CCP trackage rights. BN's acquisition of the CCP lines is the subject of a petition for exemption pending in Finance Docket 32097, *Burlington Northern Railroad Company—Purchase Exemption—Chicago Central & Pacific Railroad Company*. The trackage rights will become effective within 10 working days of a decision in that proceeding.

Any comments must be filed with the Commission and served on Michael E. Roper, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of these exemptions, any employees adversely affected by the transaction will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen and revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the effectiveness of the exemption.

Decided: July 16, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-17420 Filed 7-22-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92-53; Exemption Application No. D-8798, et al.]

Grant of Individual Exemptions; The Equitable Life Assurance Society of the United States, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Equitable Life Assurance Society of the United States (Equitable), Located in New York, NY

[Prohibited Transaction Exemption 92-53; Exemption Application No. D-8798]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) shall not apply to the receipt of common stock of The Equitable Companies Incorporated (Equitable

Holdings), or the receipt of cash of policy credits, by certain plans (the Plans), other than those maintained by Equitable or an affiliate of Equitable for its own employees, in connection with a plan of reorganization (the Demutualization Plan) adopted by Equitable and implemented pursuant to section 7312 of the New York Insurance Law, provided the following conditions are met:

(1) The Demutualization Plan is implemented in accordance with procedural and substantive safeguards that are imposed under New York law and is supervised by the New York Superintendent of Insurance (the Superintendent).

(2) The Superintendent reviews the terms of the options that are provided to any policyholders of Equitable (the Eligible Policyholders) as part of his review of the Demutualization Plan, and the Superintendent only approves the Demutualization Plan following a determination that such Plan is fair and equitable to all Eligible Policyholders.

(3) Each Eligible Policyholder has an opportunity to comment on the Demutualization Plan and decide whether to vote to approve such Demutualization Plan after full written disclosure is given such policyholder by Equitable, of the terms of the Plan.

(4) Any election by a Plan to receive stock, cash or policy credits, pursuant to the terms of the Demutualization Plan is made by one or more independent fiduciaries of such Plan and neither Equitable nor any of its affiliates exercises any discretion or provides investment advice with respect to such election

(5) After each Eligible Policyholder is allocated a minimum of three shares of common stock (subject to adjustment if the total number of shares of common stock allocated to Eligible Policyholders and AXA is changed, as provided in the Demutualization Plan), additional consideration allocated to Eligible Policyholders who own participating policies is based on actuarial formulas that take into account each participating policy's contribution to the surplus of Equitable which formulas have been approved by the Superintendent with the assistance of Coopers & Lybrand.

(6) All Plans participate in the transactions on the same basis as other Eligible Policyholders that are not Plans within their respective groupings.

(7) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of stock.

(8) All of Equitable's policyholder obligations remain in force and are not affected by the Demutualization Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on April 10, 1992 at 57 FR 12527.

Written Comments

The Department received 55 written comments with respect to the Notice, 54 of which were submitted by Plan policyholders of Equitable and 1 by Equitable. Of the written comments received, 1 comment was withdrawn. Nine commentators said they approved of the Notice and indicated that it should be granted by the Department. Thirty commentators expressed their opposition to the Notice for various reasons ranging from general dissatisfaction with the Demutualization Plan to the propriety of having to pay withdrawal charges to Equitable if an annuity contract was prematurely canceled by the annuitant. Thirteen commentators neither affirmed nor objected to the Notice. Instead, these commentators sought additional information or clarification with respect to the impact of the proposed Demutualization Plan on their contracts with Equitable. Finally, Equitable in its comment letter made certain technical clarifications to portions of the operative and conditional language of the Notice as well as to several statements made in the Summary and Facts and Representations.

Following is a discussion of those comments which address the question of whether the Department should grant the proposed exemption and the responses made by Equitable with respect thereto. Also discussed is the comment that was submitted by Equitable and the Department's response to that comment.

Plan Policyholder Comments

Eight policyholders directed their comment letters to the merits of the Demutualization Plan, the financial condition of Equitable or, in some cases, the investment in Equitable by AXA, the French insurance company. In response to these comments, Equitable observes that the Notice is premised on extensive safeguards that New York law provides to policyholders of a mutual life insurance company that proposes to convert to a stock life insurance company and that all policyholders, including Plan investors, have had the benefit of these safeguards in the case of the Equitable demutualization. In this regard, Equitable further states that its Board of Directors has adopted the Demutualization Plan and all affected policyholders have had an opportunity to express their views at the public hearing and to vote on the Demutualization Plan. The vote was completed on May 6, 1992 with an affirmative vote of over 92 percent of the approximately 880,000 policyholders who voted. In addition, Equitable represents that the Superintendent issued an Opinion and Decision approving the Demutualization Plan and finding it fair and equitable to policyholders. According to Equitable, the Superintendent also concluded that the implementation of the Demutualization Plan would enhance the operations of Equitable and that Equitable would have an amount of capital and surplus deemed by the Superintendent to be reasonably necessary for its future solvency.

Equitable also notes that individual policyholders may be opposed to demutualization for various reasons, including the fact that a foreign investor will obtain a substantial equity interest in Equitable Holdings, concerns about stock life insurance companies generally and concerns about the effect of the implementation of the Demutualization Plan on Equitable's financial condition. However, Equitable believes that the procedural safeguards provided under section 7312 of the New York Insurance Law have provided policyholders with ample opportunity to express their concerns. According to Equitable, the ultimate question of whether or not it should demutualize is an issue that must be decided by its Board of Directors, its policyholders and the Superintendent who must approve the Demutualization Plan.

Several owners of individual retirement accounts (IRAs) and tax sheltered annuities (TSAs) expressed concern over the security of their retirement savings following demutualization. Two commentators questioned whether they could rollover their retirement funds without penalty. Another commentator said she was opposed to Equitable's Demutualization Plan because she did not want her TSA to be subject to stock market fluctuations.

In response to these comments, Equitable represents that the Policyholder Information Booklet contains language stating that a policyholder's benefits, values, premiums and guarantees will not be affected by the proposed demutualization. Equitable also notes that IRA and TSA owners generally have the contractual right to remove their funds (subject to applicable withdrawal charges) from Equitable, to

roll them over without loss of tax-favored status and that demutualization will not diminish this right. Equitable further explains that fluctuations in Equitable's stock price as a publicly-traded company will have no impact on the value of the commentator's TSA contract.

In another comment letter, the trustees of a Plan policyholder objected to the proposed demutualization on the grounds that the trustees believed it was more appropriate for the Plan to invest in an insurance contract issued by a mutual life insurance company rather than in a contract issued by a stock life insurance company. The trustees also stated that in view of Equitable's proposed demutualization, the Plan should be permitted to transfer amounts deposited with Equitable under its existing annuity contract without paying applicable withdrawal charges.

In response, Equitable again represents that the Demutualization Plan will have no effect on its contractual obligations or the rights of policyholders. Neither New York Insurance Law nor the Demutualization Plan permit a policyholder to receive more favorable treatment than other, similarly-situated policyholders merely because the policyholder opposes the Demutualization Plan. Therefore, Equitable considers it inappropriate to provide for a penalty-free withdrawal policy such as the one suggested by the policyholder.

An owner of an IRA objected to not having a choice as to the form of compensation received. Equitable represents that it had initially intended to provide IRA and TSA owners with the same type of compensation accorded to other policyholders (i.e., stock, with cash being available in certain circumstances for policyholders allocated a small number of shares). However, in a ruling Equitable obtained from the Internal Revenue Service it was stated that the tax status of IRA or TSA contracts would not be adversely affected if the compensation was in the form of policy credits. Therefore, Equitable explains that compensation in the form of cash or stock would have exposed these policyholders to a risk of loss of the tax-favored status of their contracts. Thus, to protect IRA and TSA owners, Equitable represents that the Demutualization Plan provides for compensation with respect to such contracts that will be in the form of policy credits.

In a comment letter submitted by the managing trustee of a Plan policyholder, objections were raised to the Demutualization Plan on the grounds that the current level of executive compensation is excessive and Equitable would have the ability to issue stock options as part of its executive compensation package.

Equitable disagrees with the comment. It notes that compensation in the form of stock of stock options is an effective means with which to provide executives with an incentive to improve a company's performance, since a portion of the value of an executive's compensation depends on the performance of the company as reflected in the company's stock price. Equitable represents that Equitable Holdings will adopt a stock incentive plan under which a committee of directors, each of whom must be a "disinterested person" within the meaning of Rule 16b-3 of the Securities Exchange Act of 1934, may grant stock options to officers and other key employees. Equitable explains that the committee will not be able to grant any stock options prior to the first anniversary of the initial public offering of holding company stock and options cannot be exercised for an additional year.

Equitable's Comment

With respect to modifications to the Notice, Equitable observes that in several places, the Notice refers to "employee benefit plans." However, as stated in the application, Equitable explains that it may be a "disqualified person" with respect to arrangements involving IRAs which are described in section 4975(e)(1) of the Code but which are not employee benefit plans as that term is defined under the Act. Accordingly, Equitable believes that the exemption should be modified throughout to refer to "plans" rather than to "employee benefit plans."

After considering this comment, the Department has decided to adopt Equitable's recommendation by modifying the exemption as requested and thereby substituting the word "plans" for "employee benefit plans" in the operative and conditional language as well as in the Summary of Facts and Representations.

Equitable states that Condition 5 of the Notice provides that, after each Eligible Policyholder receives a minimum of three shares of Equitable Holdings stock, additional consideration allocated to such Eligible Policyholders is to be based on actuarial formulas determined from the policy's contribution to the surplus of Equitable. While this statement is not inaccurate, Equitable states that it is not clear from the language of the Notice that the allocation of additional consideration will be limited to those Eligible Policyholders who own participating policies. Additionally, Equitable represents that Condition 5, as it is currently drafted, does not specify that the fixed allocation of three shares to each Eligible Policyholder may be adjusted in certain circumstances.[1] To address these points, Equitable believes that the following language should be substituted in place of the current Condition 5 of the Notice:

"(5) After each Eligible Policyholder is allocated a minimum of three shares of common stock (subject to adjustment if the total number of shares of common stock allocated to Eligible Policyholders and AXA is changed, as provided in the Demutualization Plan), additional consideration allocated to Eligible Policyholders who own participating policies is based on actuarial formulas that take into account each participating policy's contribution to the surplus of Equitable which formulas have been approved by the Superintendent with the assistance of Coopers & Lybrand."

The Department concurs with this comment and has modified Condition 5, accordingly.

In addition to these comments, Equitable has clarified certain portions of the Summary of Facts and Representations. In this regard, Equitable represents that Section 4 of the Summary of Facts and Representations indicates that "all Eligible Policyholders" will be eligible to vote on the Demutualization Plan. However, Equitable wishes to clarify that all policyholders whose policies were in force on the date of adoption of the Demutualization Plan—regardless of whether they are "Eligible Policyholders"—were provided with notice of the hearing on the Demutualization Plan and are entitled to vote on the Demutualization Plan. In addition, Equitable asserts that the policyholder voting requirements of section 7312 of the New York Insurance Law are satisfied if two-thirds of voting policyholders who cast ballots vote in favor of the Demutualization Plan

[1] To establish an appropriate share price for the shares of Equitable Holdings stock in the initial public offering, Equitable may, with the consent of the Superintendent, decrease the 100 million shares of Equitable Holdings stock to be allocated to Eligible Policyholders and AXA. Any decrease in the number of shares would serve to adjust the per share price to within a range which Equitable finds appropriate for purposes of the initial public offering that is expected to take place in connection with the Demutualization Plan. In such event, the fixed allocation of shares to Eligible Policyholders would also be reduced. The Demutualization Plan also permits the total allocation of shares to be increased and, in that event, the fixed allocation would be increased and there would be a corresponding adjustment in the price per share.

(rather than two-thirds of all Eligible Policyholders, as stated in section 4).

Equitable also explains that Section 9 of the Summary of Facts and Representations indicates that Eligible Policyholders will receive cash pursuant to the Demutualization Plan unless they affirmatively indicate a preference to receive stock. Equitable, however, emphasizes that while cash may be paid to Eligible Policyholders in a few specified circumstances, distributions made pursuant to the Demutualization Plan will generally be in shares of Equitable Holdings stock and not in cash.

Equitables notes that section 10 of the Summary of Facts and Representations contains a description of the commission-free sales program that will be established by Equitable. Under this program, Eligible Policyholders who receive 20 or fewer shares of common stock pursuant to the Demutualization Plan will be entitled to commission-free sales in the public market of all of the common stock they receive pursuant to the Demutualization Plan, for a limited time period beginning approximately nine months after the Demutualization Plan becomes effective. Such sales will be conducted at market prices and without the payment of any brokerage commissions or similar fees. In this respect, Equitable notes that the 20 share limitation may be subject to adjustment in certain circumstances which are explained herein in the footnote.

Equitable also notes that section 10 of the Summary of Facts and Representations indicates that it is currently "contemplated" that shares of Equitable Holdings stock will be listed on the New York Stock Exchange (the NYSE). Equitable represents that Equitable Holdings stock is not yet listed on the NYSE and that discussions with the NYSE are still underway at this time. In any event, Equitable represents that Equitable Holdings stock will be actively traded in the public markets.

As a final comment, Equitable wishes to note three technical corrections relating to the names of various companies involved in the proposed demutualization. First, the name of the holding company formed in connection with the Demutualization Plan is "The Equitable Companies, Incorporated" rather than "Equitable Companies Incorporated." Second, the correct name of the investment banking firm referred to in section 3, paragragh 3 of the Summary of Facts and Representations is "Alex. Brown & Sons, Inc." and not Alexander Brown & Sons, Inc." Third, the proper reference to AXA, is "AXA" rather than "AXA, S.A."

The Department notes that an exemption is subject to the truth and accuracy of the material facts and representations contained in the application and as summarized in the Summary of Facts and Representations. For clarity, the Department has determined that it would be helpful to modify the Summary of Facts and Representations and concurs with the recommendations made by Equitable.

After consideration of the entire record, including the written comments received, the Department has determined to grant the exemption subject to the modifications described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mobay Corporation Salaried Employees Savings Plan, Afga Corporation Employee Savings Plan, and Miles Savings Plan (collectively, the Plans), Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 92–54; Application Nos. D–8939, D–8940, D–8941]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a restorative payment to the Plans (the Restorative Payment) by Miles Inc., the sponsor of the Plans, with respect to the Plan's interest in a guaranteed investment contract the (GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Restorative Payment (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arms'-length transactions with an unrelated party, (b) the Restorative Payment is made only with respect to amounts owed under the terms of the GIC, (c) the Repayments shall not exceed the Restorative Payment, (d) the Plans will not pay any interest or expenses with respect to the Restorative Payment, and (e) the Repayments are restricted to, and shall in no event exceed, the amounts actually received by the Plans from Executive Life and other responsible third parties with respect to the GIC.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 8, 1992 at 57 FR 19950.

WRITTEN COMMENTS: The Department received one written comment to the proposed exemption and no requests for a hearing. The comment expressed concern that the proposed transaction might enable Miles to "gain favor at the expense of the Plan without violation of the proposed agreement," in the event that the GIC Payments by Executive Life and other GIC Payors are less than the full amount of principal and interest due the Plan under the terms of the GIC.

A response to the comment was submitted to the Department by Miles, the applicant with respect to the proposed exemption. Miles notes that under the Agreement establishing the terms of the Restorative Payment and its Repayment by the Plan, the Repayments are limited to the lesser of (1) total GIC Payments received by the Plan from GIC Payors, or (2) the amount of the Restorative Payment made to the Plan by Miles. Miles states that under this arrangement, it is not possible for Miles to receive more than it has paid to the Plans as the Restorative Payment. Miles also notes that the Agreement provides that if the Plan receives less in total GIC Payments than the Restorative Payment, the Plan will have no obligation to repay the difference, and Miles will bear the loss of any such difference. Miles points out that Miles is receiving no interest or other fees or commissions for making the Restorative Payment to the Plan.

After consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sheboygan Drugs, Inc. Retirement Plan (the Plan), Located in Sheboygan, Wisconsin

[Prohibited Transaction Exemption 92–55; Exemption Application No. D–9024]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (Sale) of certain coins by the Plan to William J. Zajkowski, a disqualified person with respect to the Plan, provided that (1) the Plan incurs no commissions, fees, or other expenses from the Sale, and (2) the Plan receives as consideration from the Sale the asking price in the open-market as stated in writing by a qualified, independent coin dealer on the date of the Sale.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24826.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Gynecology-Obstetric Associates of Western New York, P.C. Profit Sharing Plan (the Plan), Located in Niagara Falls, NY

[Prohibited Transaction Exemption 92–56; Exemption Application No. D–8833]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale by the Plan, for the total cash consideration of $127,000, of an office condominium (the Property) to a partnership (the Partnership) comprised of the principal shareholders of Gynecology-Obstetric Associates of Western New York, P.C. (the Employer), provided the following conditions are met: (1) The amount paid for the Property is not less than fair market value on the date of the sale; (2) the sale is a one-time transaction for cash; (3) the Plan does not pay any real estate fees or commissions in connection therewith; (4) the sales price for the Property is based upon its independently appraised fair market value; (5) the Partnership assumes a pre-existing loan obligation of the Plan with respect to the Property; (6) an independent fiduciary monitors the terms of the proposed sale on behalf of the Plan; (7) within 90 days of the publication, in the **Federal Register**, of the grant of this notice of proposed exemption, the Employer pays the Internal Revenue Service all applicable excise taxes stemming from the Employer's past and continued leasing of the Property from the Plan; and (8) the Employer pays the Plan all rental amounts that may be in arrearage plus reasonable interest within 90 days of the granting of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 29, 1992 at 57 FR 22835.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of July, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92–17326 Filed 7–22–92; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8890, et al.]

Proposed Exemptions; Holiday Inns, Inc. Savings and Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

WRITTEN COMMENTS AND HEARING REQUESTS: All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

NOTICE TO INTERESTED PERSONS: Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective

December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Holiday Inns, Inc. Savings and Retirement Plan (the Plan), Located in Atlanta, Georgia [Application No. D–8890].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed extension of credit to the Plan (the Advances) by Holiday Inns, Inc. (the Employer), the sponsor of the Plan, with respect to guaranteed investment contract number CG0120303A (the GIC) issued to the Plan by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Advances (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party, (b) the Advances are made only in lieu of payments due from Executive Life with respect to the GIC, (c) the Repayments shall not exceed the amount of the Advances plus any interest which may accrue thereon from the date of each Advance at the S.I. Daily Rate (as described below), (d) the Repayments of the Advances, including interest thereon, if any, shall be made only from, and shall not exceed, the amounts actually received by the Plan from Executive Life and other responsible third parties with respect to the GIC (Third Party Recoveries), and (e) the Repayments are waived to the extent the Advances exceed the Third Party Recoveries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with approximately 7,500 participants as of March 31, 1991. The Employer, a wholly-owned subsidiary of Bass Public Limited Company of England, is engaged in the public hospitality industry and sponsors the Plan on behalf of its employees and those of its affiliates. As of March 31, 1991, there were total assets of approximately $104 million in the Plan. The trustees of the Plan are Michael J. Rumke, Timothy V. Williams, Craig H. Hunt and Michael L. Smith (the Trustees), each of whom is an employee of the Employer or its affiliates.

2. Contributions to the Plan, made by the Employer and its affiliates and by Plan participants, are maintained in individually-directed participant accounts (the Accounts). Participants may invest their Account balances in any of three different investment funds within the Plan, including a Stable Income Fund (the S.I. Fund), which invests primarily in guaranteed investment contracts issued by insurance companies. As of March 31, 1991, the S.I. Fund, with assets of approximately $89 million, constituted about 86 percent of the total assets of the Plan. Discretion over the investment of assets in the S.I. Fund is exercised solely by the Trustees.

3. Among the assets in the S.I. Fund is the GIC, which the Trustees purchased on behalf of the Plan on December 31, 1986 with an initial premium deposit of $4,166,862.64. The terms of the GIC established a deposit period commencing December 31, 1986 and terminating December 31, 1987, and provided a guaranteed interest rate of 8.65 percent through the maturity date of June 30, 1992. Under the GIC terms, pre-maturity withdrawals (the Withdrawals) by the Plan are authorized to fund Account distributions to Plan participants and transfers by participants of their Accounts from the S.I. Fund to the Plan's other investment funds. The Employer represents that as of April 11, 1991 the GIC had a face value of approximately $12,700,000, constituting approximately 14.2 percent of the assets in the S.I. Fund and approximately 12.2 percent of the total assets held by the Plan.

4. On April 11, 1991 Executive Life was placed into conservatorship by the insurance commissioner of the State of California. The Employer represents that Executive Life has suspended payments on its guaranteed investment contracts, including the GIC held by the Plan, and that under the prevailing circumstances it is uncertain whether, or to what extent, Executive Life will be able to make any payments of principal or interest due the Plan under the terms of the GIC for Withdrawals and upon maturity.[1] The Employer represents that the uncertainties surrounding the problems of Executive Life and the GIC have caused substantial concern and anxiety among Plan participants and the Trustees. In order to relieve the participants' concerns and to protect the Accounts which are invested in the GIC, the Employer proposes to provide the S.I. Fund with the funds necessary to meet its distribution and liquidity requirements, and to prevent any losses which the Plan might otherwise experience as a result of its investment in the GIC. Accordingly, the Employer proposes the Advances to achieve these objectives, and is requesting an exemption for the Advances, and the potential Repayments, under the terms and conditions described herein.

5. The Advances and the potential Repayments will be made pursuant to an agreement (the Agreement) between the Employer and Trustees, under which the Employer agrees to guaranty all amounts due from Executive Life under the terms of the GIC, plus interest at a rate designated in the Agreement (the Guaranteed Amount). Under the terms of the Agreement, the Guaranteed Amount is the maturity value of the GIC as of June 30, 1992, plus interest on such amount from such date until the date of payment at a varying rate, compounded daily, equal to the rate of return earned from day to day by the assets of the S.I. Fund, excluding the GIC, during such period (the S.I. Daily Rate). Under the Agreement, the Employer's obligation to pay the Guaranteed Account to the Plan is reduced by Third Party Recoveries, defined as the total amounts received by the Plan from Executive Life or other responsible parties with respect to the GIC.

Pursuant to the Agreement, the Employer will commence immediately to make Advances to the Plan at such times and in such amounts necessary to enable the Plan to fund Account distributions to participants, or to enable transfers of Accounts out of the S.I. Fund to other Plan funds. The Advances will be credited toward the Guaranteed Amount. The Guaranteed Amount becomes fully payable in a final Advance by the Employer thirty days

[1] The Department notes that the Trustees decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC

following the date on which the Trustees and the Employer mutually agree that there remains no reasonable prospect of any future recovery from Executive Life or from any persons, other than Holiday Inns, with respect to the GIC.

In return, the Trustees agree to make the Repayments, which are reimbursements to the Employer for payments made by the Employer to the Plan pursuant to the Agreement in satisfaction of the obligation to pay the Guaranteed Amount. The Agreement states that the Repayments are limited to the lesser of (a) the total amount of Third Party Recoveries, or (b) the total Advances, plus interest. No Plan assets other than Third Party Recoveries may be used to make the Repayments, and the Repayments will be waived to the extent the Advances exceed the Third Party Recoveries. The Agreement provides that the Advances will bear interest at the S.I. Daily Rate (the Repayment Interest), but the Repayments by the Plan will include the Repayment Interest only in the event the Plan receives (from Third Party Recoveries and the Employer) the full amount due as the Guaranteed Amount under the Agreement, and only to the extent the amounts received with respect to the GIC are sufficient to pay such Repayment Interest. The Plan's payment of Repayment Interest, like the Repayments of the Advances, is limited to the amount of Third Party Recoveries received by the Plan. Further, no Repayments of the principal amounts of the Advances or Repayment Interest thereon may be made until the Plan has recovered the full Guaranteed Amount (see section 5, above) pursuant to the Agreement.

The Employer represents that its proposal to charge Repayment Interest on the Advances, to be paid only in the event the Plan recovers the full Guaranteed Amount under the Agreement, arises from the Employer's desire to be compensated in part for the earnings which the Plan would be deemed to have made on the Advances. The Employer states that under the Agreement, the Plan participants are assured that existing Plan assets invested in the GIC will continue to enjoy an earning capacity following the GIC's maturity date, at the same rate of return, the S.I. Daily Rate, being earned by other S.I. Fund assets. The Employer proposes the Repayment Interest at the same rate, the S.I. Daily Rate. The Employer represents that by recovering Repayment Interest at the S.I. Daily Rate only from Third Party Recoveries, and only to the extent the Plan receives amounts sufficient to enable any such payment of Repayment Interest, the Employer will realize only a reasonable compensation for the Plan's use of Advances, and only at the same rate earned by the Plan on such amounts.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk or uncertainty with respect to payments due from Executive Life under the GIC; (2) The proposed transaction will enable the S.I. Fund to fund Account distributions and Account transfers to other Plan funds; (3) The Plan will receive the full maturity value of the GIC, together with interest thereon at the S.I. Daily Rate; and (4) Repayments of the Advances will be restricted to the Third Party Recoveries and will be waived to the extent the Advances exceed the Third-Party Recoveries.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Polymer Group Retirement Savings Plan and Trust (the Plan), Located in Dayton, Ohio

[Application No. D–9075]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the extension of interest-free credit (the Advances) to the Plan by Cadillac Plastic Group, Inc. and its affiliates (collectively, the Employers), parties in interest with respect to the Plan, and (2) the repayment of the Advances by the Plan, provided that (a) no interest and/or expenses are paid by the Plan; (b) the Advances are used only in lieu of withdrawals due from the Guaranteed Investment Contract, Number CG01302A3A (the GIC) issued by Executive Life Insurance Company (Executive Life); (c) the repayment by the Plan of the Advances is restricted to cash proceeds paid to the Plan by or on behalf of Executive Life with respect to the obligations of Executive Life under the GIC; and (d) repayment of the Advances will be waived to the extent that the Plan receives less from the disposition of the GIC than the total amount of the Advances.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of June 1, 1992.

Summary of Facts and Representations

1. The Employers, which are the sponsors of the Plan, include the following corporations: (a) M. A. Hanna Company (Hanna), a Delaware corporation which adopted the Plan for the employees of its division that is designed as Colonial Rubber Works, Inc. (manufacturer of rubber and plastics compounding); (b) Cadillac Plastic Group, Inc. (Cadillac), a Michigan corporation and wholly-owned subsidiary of Hanna (distributor of plastic sheet, rod, tube, and film); (c) Day International, Inc., a Delaware corporation and wholly-owned subsidiary of Cadillac (producer of printing and textile products); and (d) BenePlan Strategies, Inc., an Ohio corporation and wholly-owned subsidiary of Cadillac (third-party administrator of benefit plans).

The Plan is a defined contribution pension plan with 1,798 participants and approximately $33,025,152.81 in total assets, as of December 31, 1991. The fiduciaries of the Plan are the Employers and the Committee for Employee Benefits Administration (CEBA) which consists of a total of 7 individual members of whom 5 are vice presidents of Hanna, one is the Director of Employee Benefits for Hanna, and remaining member is the president of BenePlan Strategies, Inc. Wells Fargo Bank, N.A. (the Trustee), a national banking association, is the trustee of the Plan, holding all of the assets of the Plan except the GIC issued by Executive Life to the Plan. Bank One, Dayton, N.A. (Bank One), a national banking association, has been replaced as trustee for the assets of the Plan with the exception of one asset, the GIC issued by Executive Life to the Plan, which will remain titled in Bank one as trustee.

2. Funding of the Plan is made by the participants through salary reduction agreements and by the Employers through matching contributions. The Plan provides for individually-directed accounts under which participants may direct investment of deferrals of income and matching Employers contributions in one or more of several investment funds under the Plan that are

maintained and/or managed by the Trustee.[2]

Two additional funds under the Plan are the Retirement Fund and the Guaranteed Interest Fund (the Guaranteed Fund). The Guaranteed Fund had its assets primarily in contracts with insurance companies that provided a contract with a guaranteed specific rate of return for a specific time period. Currently all the guaranteed insurance contracts in the Guaranteed Fund have matured and distribution has been made to the Plan, except for the GIC issued by Executive Life. Except for their assets in the GIC, the assets in the Retirement Fund and the Guaranteed Fund are now invested in other funds, such as money market funds or other fixed income funds. Both the Retirement Fund and the Guaranteed Fund have assets totaling $7,269,740.74 invested in the GIC issued by Executive Life, which comprise 22 percent of the entire assets of the Plan, as of December 31, 1991. The Retirement Fund is allocated $548,553.46 of the assets in the GIC and the Guaranteed Fund is allocated $6,721,187.28 of the assets in the GIC. Also, as of December 31, 1991, there were 902 participants of the Plan who had portions their respective individually-directed account balances in the Retirement Fund and the Guaranteed Fund. Bank One remains the trustee for the Plan with respect to the GIC in order to preserve and enforce claims against Executive Life on behalf of the Plan and its participants, the GIC having been issued in the name of Bank One, as trustee, and because the accounting system of Wells Fargo Bank is not compatible with the maintenance of a frozen investment fund such as the Guaranteed Fund.

3. On September 1, 1988, the Plan acquired the GIC from Executive Life for the sum of $6,971,000, and had allocated portions of it to the Retirement Fund and the Guaranteed Fund. The GIC was to provide an annual guaranteed interest rate of 8.6 percent and a maturity date of September 30, 1991. At maturity, the accumulated book value of the GIC (i.e., the initial deposit, plus interest earned, and minus withdrawals, if any, during the term of the GIC) was to be paid to the Plan.

Executive Life did not make its required payment to the Plan on the maturity date of September 31, 1991, because on April 11, 1991, Executive Life was placed into conservatorship by the California Insurance Commissioner.[3] As a result of it being placed in conservatorship, Executive Life suspended all payments on its guaranteed investment contracts, including the GIC. Executive Life continues to send the Plan monthly statements following the maturity date showing additional interest credits on the GIC at the guaranteed rate. However, because of the suspension of payments on the GIC by Executive Life all assets of the Retirement Fund and the Guaranteed Fund which were invested in the GIC at the time of Executive Life conservatorship were frozen. Participants in the Plan were unable to obtain transfers, distributions, withdrawals, or loans with respect to that portion of their account balances invested in the GIC.

When, and to what extent, the Plan will receive payments from Executive Life, or from state guaranty funds, or other third parties, with respect to the GIC remains unclear. The applicant represents that the conservatorship for Executive Life has progressed to where some recovery seems certain, but ongoing issues concerning the relative priorities of various claims against Executive Life, and other matters, leave the timing and amount of recovery uncertain.

4. The Employer proposes the Advances to provide the Plan with sufficient cash to enable participants to obtain transfers, distributions, withdrawals, or loans from the portions of their respective account balances that are invested in the GIC. The applicant represents that the Advances are being made pursuant to written agreements between the Employers and Bank One only when and to the extent necessary to provide funds to enable participants to obtain distributions, withdrawals and loans from the portions of their account balance frozen in the Plan, and to enable participants to transfer the frozen portions of their account balance into other investment funds.

The Advances would be in the form of a non-interest bearing line of credit running from the Employers to the Plan in an amount up to the accumulated book value of the GIC as of September 30, 1991, and, additional amounts to be credited as interest after September 30, 1991.[4] The Plan would agree to repay the Advances to the Employers without interest, only from payments made to the Plan with respect to its investment in the GIC, by either Executive Life, state guaranty funds, or other third parties, which when combined with Advances previously made by the Employers, exceed the current value of the GIC.[5] To secure the repayment obligation of the Plan, the Plan would assign to the Employers the rights of the Plan to the proceeds from the GIC, but only in the total amount of the Advances. No other collateral would be required of the Plan and no other assets of the Plan would be used to repay the Advances. If the Plan recoups less than the amount of the Advances to the Plan by the Employers with respect to the GIC, any additional repayments would be waived by the Employers.

5. Since it is unlikely that Executive Life will make timely payments or provide the full amount of interest and principal under the GIC, and the Employers desire to protect participants from uncertainties of the Executive Life conservatorship and desire to facilitate transfers, distributions, withdrawals, and loans from the frozen portion of the account balances, the applicant requests that the proposed exemption for the Advances and their repayment be made effective June 1, 1992. The Plan has been amended to provide that participants have the ability and opportunity to reallocate the investments of their respective account balances in the Plan on a daily basis beginning June 1, 1992. Prior to that date participants could change the investment of their accounts on January 1 and July 1 of each year.

The applicant represents that the transaction involving the Advances will be undertaken pursuant to written agreements and is therefore administratively feasible for the Department to grant the exemption. Furthermore, the applicant represents that the exemption is in the best interest of the participants and beneficiaries of the Plan because the Advances would provide access to all of the amounts due under the GIC as of its maturity date on

[2] These funds consist of the Money Market Fund, the Bond Index Fund, the U.S. Treasury Allocation Fund, the Asset Allocation Fund, the S&P 500 Stock Fund, the Tilts & Timing Fund, and the M. A. Hanna Stock Fund. All of the funds, except the M. A. Hanna Stock Fund are products of Wells Fargo Bank.

[3] The Department notes that the decisions to acquire and hold the interest in the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[4] Accumulated book value is the total amount of deposit made to the GIC plus interest at the contract rate, less previous withdrawals.

[5] Current value of the GIC is the accumulated book value of the GIC, as of September 30, 1991, plus additional interest from the maturity date, September 30, 1991, through the dates of any Advances made to the Plan at a rate derived from money market fund yields for such period. For the period of September 30, 1991, through December 31, 1991, the rate was the rate paid by the Bank One Money Market Fund. For all periods after December 31, 1991, the interest rate will be the rate paid by the Wells Fargo Money Market Fund.

September 30, 1991 and will provide for the accumulation of interest after that date; and the Advances will facilitate the normal operation of the Plan with respect to distributions, withdrawals, loans, and transfers of the Plan assets invested in the GIC. The applicant also represents that the rights of the participants and beneficiaries will be protected by the terms of the Advances and their repayments. The Advances will be interest-free and the repayments will not require interest payments to the Employers. Further, the Advances will be repaid by the Plan only from funds received from Executive Life, state guaranty funds, or other third parties. No collateral will be required and no other assets of the Plan will be used to repay the Advances. To the extent that the Plan ultimately recoups from Executive Life, or others, an amount less than the amount guaranteed by the Employers, repayment to the Employers will be waived. The applicant represents that the transactions for the Advances and repayments have been designed to comply with the requirements of the Internal Revenue Service Revenue Procedure 92–16, thus insuring that participants and beneficiaries will not suffer unexpected adverse tax consequences as a result of the transactions.

6. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because (a) the Advances will guarantee the earnings of the Plan under the GIC at its stated interest rates through September 30, 1991 and will provide for the accumulation of interest after that date, and will protect the principal investment of the Plan in the GIC; (b) the Advances will enable the Plan and its participants to resume the ability to accomplish transfers, distributions, withdrawals, or loans out of that portion of their account invested in the GIC; (c) the Plan will pay no interest nor incur any expenses with respect to the Advances and their repayments; (d) repayments of the Advances will be restricted to payments by or on behalf of Executive Life with repsect to the GIC, and no other assets of the Plan will be involved in the transactions; and (e) repayment of the Advances will be waived to the extent the Plan recoups less than the total amount of the Advances from, or on behalf of, Executive Life with respect to the GIC.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Goldman, Sachs & Co. (Goldman Sachs) and the Goldman Sachs Trust Company (GSTC), Located in New York, New York

[Application No. D–8977]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lending of securities to Goldman Sachs by employee benefit plans, including plans for which GSTC acts as custodian, and to the receipt of compensation by GSTC in connection with these transactions, provided that the following conditions are met:

1. Neither Goldman Sachs nor GSTC will have discretionary authority or control over a plan's investment in the securities to be loaned, and GSTC will have no discretionary authority or control over the investment of the plan assets involved in the transactions;

2. Goldman Sachs will directly negotiate an "exclusive borrowing" agreement with a plan fiduciary who is independent of Goldman Sachs and GSTC;

3. The exclusive borrowing agreement may be terminated by either party to the agreement at any time;

4. The market value of the collateral will initially equal at least 102 percent of the market value of the loaned securities and, if the market value of the collateral at any time falls below 100 percent, Goldman Sachs will deliver additional collateral on the following day such that the market value of all collateral will again equal 102 percent;

5. Goldman Sachs or GSTC will furnish weekly reports to the plan fiduciaries so that the value of the collateral may be monitored;

6. All procedures regarding the securities lending activities will at a minimum conform to the applicable provisions of Prohibited Transaction Exemptions (PTEs) 81–6 and 82–63;

7. Goldman Sachs will indemnify the plan against any losses due to its use of the borrowed securities;

8. The plan will receive credit for all interest, dividends or other distributions on any borrowed securities; and

9. Upon delivery of loaned securities to the Goldman Sachs, GSTC or another custodian, on behalf of a plan, will receive from Goldman Sachs, the same day by physical delivery or book entry in a securities depository collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81–6.

Summary of Facts and Representations

1. Goldman Sachs is owned by the Goldman Sachs Group, L.P. (the Goldman Group), the individual general partners of the Goldman Group, and one institutional investor. Goldman Sachs is an investment services firm which is a member of the New York Stock Exchange and other principal securities exchanges in the United States and a member of the National Association of Securities Dealers. Goldman Sachs is one of the largest investment firms in the United States, with consolidated capital (partners capital and subordinated debt) of $1.7 billion.

2. Goldman Sachs, acting as principal, borrows securities from institutions and either utilizes such securities to satisfy its own needs, or re-lends these securities to brokerage firms and other entities which need a particular security for a certain period of time. Borrowers often need securities to satisfy deliveries as a result of short sales or the failure of the broker to receive securities it is required to deliver. Goldman Sachs is one of the largest institutional securities borrowers and lenders in the United States, borrowing and lending securities equal in value to approximately $20 billion on an average daily basis. In making such loans, Goldman Sachs carefully reviews the creditworthiness of its counterparties.

3. GSTC is a wholly owned subsidiary of the Goldman Group and an affiliate of Goldman Sachs. GSTC is organized as a limited purpose trust company in New York and provides a variety of services to its clients, including serving as custodian and clearing agent.

4. An institutional investor, such as a pension fund, lends securities in its portfolio to a broker-dealer or bank in order to earn a fee in addition to any interest, dividends or other distributions paid on those securities. The lender generally requires that the security loans be fully collateralized, and the collateral usually is in the form of cash or high quality liquid securities such as U.S. Government or Federal Agency obligations or certain bank letters of credit. Institutional investors often utilize the services of an agent in the performance of their securities lending

transactions. The applicant believes that the essential functions which define a securities lending agent are the identification of appropriate borrowers of securities and the negotiation of the terms of loan to the borrowers. There are services ancillary to securities lending which may include monitoring the level of collateral and the value of the loaned securities and investing the collateral in some instances.

5. Goldman Sachs and GSTC request an exemption for the lending of securities owned by certain pension plans, including plans for which GSTC will serve as custodian, to Goldman Sachs, under the arrangements described below and for the receipt of compensation by GSTC in connection with such transactions. Neither Goldman Sachs nor GSTC will have discretionary authority or control over the plan's investment in the securities to be loaned. However, because Goldman Sachs under the proposed arrangements would have discretion with respect to whether there is a loan of plan securities to itself, the lending of securities to Goldman Sachs by plans may be outside the scope of relief provided by PTE 81-6[6] and PTE 82-63.[7]

6. Goldman Sachs will directly negotiate "exclusive borrowing" agreements with plans, including plans for which GSTC serves as custodian, with a fiduciary of the plan who is independent of Goldman Sachs and GSTC. Under such an agreement, Goldman Sachs will have exclusive access for a specified period of time to borrow certain securities of the plan pursuant to certain conditions. GSTC will not participate in the negotiation of the agreement. The involvement of GSTC, if any, will be limited to such activities as holding securities available for lending, handling the movement of borrowed securities and collateral and investing or depositing any cash collateral and supplying the plans with certain reports. The applicant represents that, under the exclusion borrowing agreement, neither Goldman Sachs nor GSTC will perform for plans the functions which constitute the essential functions of a securities lending agent.

7. Upon delivery of loaned securities to Goldman Sachs, GSTC, or another custodian, on behalf of a plan, will receive from Goldman Sachs, the same day by physical delivery or book entry in a securities depository, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies, or other collateral permitted under PTE 81-6. The market value of the collateral on the preceding day will be at least 102 percent of the market value of the loaned securities. GSTC or such other custodian will monitor the level of the collateral daily and, if its market value falls below 100 percent, Goldman Sachs will deliver sufficient additional collateral on the following day such that the market value of all collateral will equal at least 102 percent of the market value of the loaned securities. Goldman Sachs, or GSTC in the case of some plans, will provide a weekly report to the plan showing, on a daily basis, the aggregate market value of all outstanding security loans to Goldman Sachs and the aggregate market value of the collateral.

8. Before entering into an exclusive borrowing agreement, Goldman Sachs will furnish to the plan the most recent publicly available audited and unaudited statements of its financial condition. Further, the agreement will contain a representation by Goldman Sachs, as provided in section 15 of the Securities Lending Agreement, that as of each time it borrows securities, there have been no material adverse changes in its financial condition. All the procedures under the agreement will, at a minimum, conform to the applicable provisions of PTE 81-6 and PTE 82-63.

9. In exchange for the exclusive right to borrow certain securities from a plan, Goldman Sachs will pay the plan either a flat fee, or a minimum flat fee plus a percentage (negotiated at the time the exclusive borrowing agreement is entered into) of the total balance outstanding of borrowed securities, or such a percentage of the total balance outstanding without any flat fee. In light of this fee arrangement, earnings generated by collateral will be returned to Goldman Sachs. The plan will receive credit for all interest, dividends or other distributions on any borrowed securities. Under some arrangements, the earnings on collateral due to Goldman Sachs and the interest, dividends and other earnings on the borrowed securities due to the plan may be offset, so that only the net amount will be returned to Goldman Sachs.

10. The exclusive borrowing agreement may be terminated by either party to the agreement at any time. Goldman Sachs will agree that upon termination it will deliver any borrowed securities back to the plan within five business days of written notice of termination. If Goldman Sachs fails to return the securities or the equivalent thereof, the plan will have certain rights under the agreement to realize upon the collateral. Pursuant to the terms of the agreement, Goldman Sachs will indemnify the plan against any losses due to its use of the borrowed securities equal to the difference between the replacement cost of the securities and the market value of the collateral on the date a loan is declared to be in default.

11. With regard to those plans for which GSTC provides custodial, clearing and/or reporting functions relative to securities loans, GSTC might negotiate with an independent plan fiduciary to receive a fee for such services. Such fees, if any, would be fixed fees (e.g., GSTC might negotiate to receive a fixed percentage of the value of the assets with respect to which it performs these services or to receive a stated dollar amount) and in addition to any fee GSTC has negotiated to receive from any such plan for standard custodial or other services unrelated to the securities lending activity. The plan and GSTC will agree in advance to the fee, subject to prior written approval of a plan fiduciary who is independent of Goldman Sachs and GSTC. The arrangement to have GSTC provide such functions relative to securities loans to Goldman Sachs will be terminable by the plan within five business days of receipt of written notice without penalty to the plan except for the return to Goldman Sachs of part of any flat fee paid by Goldman Sachs to the plan, if the plan has also terminated its exclusive borrowing agreement with Goldman Sachs. Before entering into an agreement with a plan to provide such functions relative to securities loans to Goldman Sachs, GSTC will furnish to the plan any publicly available information which it believes is necessary for the plan to determine whether to enter into or renew the agreement.

12. In summary, the applicants represent that the described transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Goldman Sachs will directly negotiate exclusive borrowing agreements with a

[6]PTE 81-6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987) provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a registered broker-dealer or a bank in which is a party-in-interest. Condition 1 of PTE 81-6 requires, in part, that neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction.

[7]PTE 82-63 (47 FR 14804, April 6, 1982) provides an exemption under specified conditions from section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code for the payment of compensation to a plan fiduciary for services rendered in connection with loans of plan assets that are securities. PTE 82-63 permits the payment of compensation to a plan fiduciary for the provisions of securities lending services only if the loan of securities itself is not prohibited under section 406(a) of the Act.

plan; (2) the lending arrangements will permit the plans to benefit from Goldman Sachs' substantial market position as a securities lender and will enable the plans to earn additional income from the loaned securities while still receiving dividends, interest and other distributions on those securities; (3) Goldman Sachs will provide sufficient information concerning its financial condition to a plan before the plan lends any securities to Goldman Sachs; (4) the collateral on each loan to Goldman Sachs initially will be at least 102 percent of the market value of the loaned securities and will be monitored daily by GSTC or another custodian; (5) Goldman Sachs (or GSTC in the case of some plans) will furnish a weekly report to the plans so that an independent fiduciary may also monitor the level of collateral; (6) neither Goldman Sachs nor GSTC will have discretionary authority or control over the plan's investment in the securities to be loaned; and (7) all the procedures will, at a minimum, conform to the applicable provisions of PTE 81–6 and PTE 82–63.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Garmac Company, Inc. Defined Benefit Pension Plan (the Plan), Located in White Plains, NY

[Application No. D–9007]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a proposed loan (the Loan) by the Plan to the Garmac Company, Inc. (the Employer), a party in interest with respect to the Plan, provided that: (a) No more than 25% of the assets of the Plan are involved in the Loan; (b) the terms and conditions of the Loan are no less favorable to the Plan than those obtainable in an arm's length transaction involving an unrelated third party; (c) an independent qualified fiduciary determines on behalf of the Plan that the transaction is feasible, in the interest of the Plan, and protective of the participants and beneficiaries of the Plan; and (d) the independent qualified fiduciary monitors compliance with the terms of the Loan throughout the duration of the transaction.

Summary of Facts and Representations

1. The Plan is a defined benefit "employee benefit pension plan" within the meaning of section 3(2)(A) of the Act and is a qualified plan under section 401(a) of the Code. As of December 31, 1991, the Plan had approximately $1,428,000 in total assets and four participants. Gardner Grant (Mr. Grant) is the sole trustee of the Plan and has exclusive discretion with regard to the investment of the assets of the Plan.

2. The Employer, a Rhode Island corporation with offices at 200 Mamaroneck Ave., White Plains, NY, invests in and manages commercial real estate. Mr. Grant is the president of and the sole shareholder of the Employer. The Employer proposes to borrow an amount from the Plan which will not exceed 25% of the assets of the Plan. The Employer represents that the Plan will not incur any fees, commissions, or other costs as a result of the application or the proposed transaction.

It is represented that the proceeds from the Loan will be utilized to repay the Employer's outstanding loan from a third party bank which is due on July 1, 1992. Accordingly, the Employer has requested retroactive relief effective as of July 1, 1992.

3. The Loan will provide for equal monthly installments of principal and interest over a period of fifteen (15) years. It is represented that on the tenth anniversary date of the Loan and upon each subsequent anniversary date up to and including the fourteenth anniversary, an independent qualified fiduciary, as further described in paragraph 6 below, will determine whether it is in the interest of the Plan to call the Loan and accelerate the payment of the remaining principal balance, with such balance to be payable in full within 180 days after written notification is provided to the Employer.

It is represented that the interest rate for the Loan will be 220 basis points added to the current yield on comparable maturity treasury obligations. Assuming a July 1 closing on the Loan with an annual call option beginning on the tenth anniversary of the Loan, it is represented that a comparable treasury obligation would be a treasury bond with a due date of May 1, 2002. If the installment payments on the Loan are not paid within fifteen (15) days of the date due each month, a late charge equal to four percent (4%) of the installment payment will be added to the amount of the installment.

The Loan will be evidenced by a promissory note and a mortgage and security agreement. The Loan will be secured by a first mortgage on a certain parcel of improved real property (the Property) which has been owned by the Employer since 1977. It is represented that in accordance with the laws of the State of Florida, the Plan's interest in the first mortgage on the Property will be recorded in Brevard County, Florida where the Property is located. If is represented that there are no other liens or encumbrances of any kind on the Property, nor will there be at any time during the term of the Loan. Further, it is represented that the obligation of the Employer under the Loan will not be subordinated to any other debt of the Employer.

In addition, to the Property serving as collateral, it is represented that the Employer has also agreed to assign to the Plan all of the Employer's rights under any and all leases currently existing or hereafter made by the Employer for any portion of the Property. It is represented that this assignment of rents will serve as additional security for the payment of all amounts due under the terms of the Loan.

4. The Property which serves in part as collateral for the Loan is located at 1113 Byrd Plaza, Brevard County, Cocoa, Florida. The Property is described as a retail shopping center on a 20.15 acre tract with 800 feet of frontage along Dixon Boulevard and 1,700 feet of frontage along Plaza Parkway. It is represented that the Property is 90% occupied, has 4 anchor tenants, and has 39 satellite tenants. On the site there are four free standing buildings (Building A, B, C, and D; collectively the Buildings) which were constructed and improved at different times between 1959 and 1990 and which contain a total of 220,667 gross square footage covering approximately 25% of the area of the site.

Building A, the main shopping plaza, contains 188,218 square feet of leasable space divided into 39 rental units, 18 of which are located in a mall. Building B, designed as a single tenant restaurant containing 12,500 square feet of leasable space, has been vacant for about a year. Building C, a retail facility with 6,812 square feet of leasable space, is currently rented to two tenants. Building D, a 874 square foot bank building with three drive up bays, has been vacant about one year.

In addition, the site is 95% covered with asphalt paving and provides 1,200 parking spaces. It is represented that the Property is fully serviced with utilities

and is accessed by improved streets. The Property is zoned for neighborhood commercial and wholesale commercial uses. It is represented that the existing improvements on the Property are considered legally permissible uses.

5. Two appraisers (the Appraisers), John H. Preston, IV (Mr. Preston), and Robert L. Leichtenberg, (Mr. Leichtenberg), MAI, of Hanson Appraisal Service, Inc., in Melbourne, Florida, were engaged to establish the fee simple market value and the leased fee value of the Property. Both of these values were subject to the following two special conditions: (a) The value estimates were based on measurements made by the Appraisers, because no plans of the Buildings were available in the city or county files; and (b) size calculations were based on measurements by the Appraisers using the legal description of the Property. As a result of their investigation, the Appraisers represent that, as of January 15, 1992, the fee simple market value of the Property was $10,300,000 and the leased fee value estimate of the Property was $8,100,000. The Appraisers represent that the leased fee value of the Property is less than the fee simple value of the Property, because the contract rents under the terms of existing leases of the Property are less than the current fair market rental value of the Property.

It is represented that the appraisal report was made in conformity with, and subject to, the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Appraisal Institute. Further, the Appraisers represent that they are independent in that they have no present or contemplated future interest in the Property and no personal interest or bias with respect to the parties involved. Mr. Leichtenberg's qualifications include membership in the American Institute of Real Estate Appraisers, state certification as a general real estate appraiser, attendance at appraisal courses offered by the Society of Real Estate Appraisers, and fifteen years of experience in preparing appraisal reports. Mr. Preston's qualifications include attendance at appraisal courses offered by the Appraisal Institute and experience in preparing appraisal reports since 1989.

6. Garrison Corwin, Esq. (Mr. Corwin), a partner in the law firm of Meighan & Necarsulmar, located in Mamaroneck, NY, has agreed to serve as the independent qualified fiduciary on behalf of the Plan with respect to the Loan. It is represented that pursuant to appropriate provisions in the Plan document Mr. Corwin has been empowered, authorized, and directed to act on behalf of the Plan with respect to the proposed transaction. After receiving advice of counsel, Mr. Corwin acknowledges that he understands and accepts the duties and responsibilities as fiduciary under the Act.

Mr. Corwin's qualifications to serve as independent fiduciary on behalf of the Plan include the experience he has gained since 1960 from the practice of law, a substantial portion of which has been in the area of commercial and residential real estate law. Mr. Corwin represents that he is independent in that he has no current affiliation or relationship with the Employer or Mr. Grant, the sole shareholder of the Employer. Although Mr. Corwin has previously provided legal services to the Employer and to Mr. Grant, it is represented that the fees received from such services have never constituted more than 1% of the total revenues on an annualized basis of Mr. Corwin or his firm.

In fulfilling his role as independent fiduciary, Mr. Corwin reviewed the following items: (a) The Plan documents; (b) the application for exemption; (c) the summary of the assets of the Plan at the beginning and end of plan year 1990; (d) the value of the Plan assets and the present value of the Plan benefits; (e) the appraisal report prepared by the Appraisers, as of January 15, 1992; (f) the 1988, 1989, and 1990 income tax return of the Employer; and (g) the investment portfolio of the Plan based on 1991 estimated balances.

Mr. Corwin has ascertained that if the proposed Loan is approved, assets currently invested in a fixed income pool earning approximately 6% will be liquidated in order to fund the Loan. In Mr. Corwin's opinion, the Plan will benefit from the projected higher rate of return on the loan. Further, after examining the Plan's portfolio, Mr. Corwin has determined that the Plan is not invested in mortgages, real estate, or any other real estate related or dependent assets and that the Loan represents a diversification which is advantageous to the Loan.

With respect to the liquidity of the Plan, none of the participants are presently entitled to benefits from the Plan, so no payments are being made out of the Plan at this time. It is represented that the Plan is currently over funded and that no contributions are anticipated in the near future. Mr. Corwin represents that the present assets of the Plan plus the income from such assets are more than adequate to meet any anticipated or unanticipated needs of the Plan. Further, it is represented that no cash flow requirements of the Plan will be adversely affected by the Loan.

It is represented that the Property prior to being improved was vacant agricultural land that had never been used for any industrial, commercial, or retail business or for storage of any industrial or hazardous products or wastes. Further, it is represented that there are no underground storage tanks on the Property, and that all pipes conduits and connections for sewage, water, electricity, gas and other utilities are in accordance with law and that all receipt and disposal is off site. Accordingly, Mr. Corwin has determined that an environmental review of the site of the Property would not be appropriate before to entering into the Loan.

Mr. Corwin represents that he negotiated, reviewed, and approved the terms and conditions of the Loan. Specifically, he represents that the method chosen to determine the interest rate for the Loan is commercially reasonable and appropriate. It is represented that after making independent inquiries about the range of interest rates currently charged by unrelated commercial mortgage lenders, Mr. Corwin determined that the interest rate on the Loan should be 220 basis points above the current yield on comparable treasury obligations. Because the Loan provides for an annual call option after the tenth year, in the opinion of Mr. Corwin, the closest comparable treasury obligation is the treasury bond due May 1, 2002. It is represented that Mr. Corwin will establish the interest rate on the Loan by adding 220 basis points to the asking yield at the close of market on Friday, June 26, 1992, for a treasury bond with a due date of May 1, 2002, as quoted in the June 19 issue of *Barron's*.

It is represented that an origination fee of 1% is usual in the context of a commercial mortgage loan, but that such charges cover various legal and administrative expenses of the commercial mortgage lender and do not function as pre-paid interest. It is represented that there will be no points charged as prepayment of future or additional interest for the Loan. However, it is represented that the Employer will pay all the commissions, fees, costs, and expenses of obtaining the Loan. In this regard, Mr. Corwin represents that it is commercially reasonable for the Employer, as borrower, to pay all of the direct costs of making a commercial mortgage loan. Further, Mr. Corwin represents that it is commercially reasonable for the

Employer, as borrower, to pay the indirect costs of originating the Loan of up to one percent (1%) of the amount of such Loan. Mr. Corwin represents that he will determine whether such costs have been incurred and will be responsible for ascertaining that the Employer fulfills its obligation with respect to the payment of all direct costs and up to 1% of the indirect costs of making the Loan to the extent the Plan incurs such indirect costs.

With respect to the adequacy of the collateral which secures the Loan, Mr. Corwin states that the value of the Property vastly exceeds the amount of the Loan and that therefore, the Loan is a secure and safe investment for the Plan. In this regard, Mr. Corwin represents that, if on the day the Loan is executed, and thereafter, as of the first day of any calendar quarter during the term of the Loan, he determines that the value of the collateral does not constitute at least 150% of the outstanding principal balance of the Loan, the Employer will be required to furnish to the Plan additional collateral having a value which is at least equal to the amount of the deficiency, or to repay the Loan to the extent necessary to eliminate the deficiency. Further, Mr. Corwin represents that the assignment of rents on the Property will provide additional protection for the Plan.

Mr. Corwin represents that he will monitor and enforce the terms of the Loan, including, without limitation, making demand for timely payment, collecting late charges due to the Plan, bringing foreclosure suit or other appropriate process on behalf of the Plan against the Employer in the event of default, and applying the proceeds thus obtained to the Loan.

After reviewing the 1988, 1989, and 1990 income tax returns for the Employer, Mr. Corwin has determined that the Employer's credit worthiness is sufficient to adequately protect the interest of the Plan and its participants and beneficiaries with respect to the Employer's obligations under the Loan.

Having concluded his analysis and review, Mr. Corwin has determined that the Loan would be an appropriate and suitable investment for the Plan, that the interest rate is at least equal to the current market rate for a loan of comparable amount, quality, and maturity, and that the other terms of the Loan are at least as favorable to the Plan as those which would be negotiated in a similar arm's length transaction with an unrelated third party. Further, Mr. Corwin represents that the Loan is a prudent investment and is in the best interest of and protective of the Plan and its participants and beneficiaries. It is represented that if Mr. Corwin should resign his position as independent fiduciary, Mr. Grant, as trustee for the Plan, will name a successor independent fiduciary.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The amount of the Loan will not exceed 25% of the assets of the Plan;

(b) The Loan will be secured, in part, by Property with a value determined by an independent appraiser;

(c) The Plan's interest in the Property will be recorded as a first mortgage;

(d) The Loan will be secured, in part, by an assignment of rents from the Property;

(e) The independent fiduciary has determined that the value of the Property and the assignment of rents serve as adequate collateral for the Loan;

(f) The independent fiduciary has reviewed the terms of the Loan and has concluded that the proposed transaction is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries;

(g) The independent fiduciary will monitor compliance with the terms of the Loan throughout the duration of the transaction; and

(h) The Plan will incur no fees, commissions, or other charges as a result of the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Amended and Restated Earth Consultants, Inc. Profit Sharing Plan (the Plan), Located in Bellevue, Washington

[Application No. D–8993].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the plan of three lots of unimproved real property located in Camano Island, Washington (the Properties) to Robert Levinson, a party in interest with respect to the Plan; provided that (a) the sale is a one-time transaction for cash; (b) the Plan receives a purchase price which is no less than the fair market value of the Properties as of the date of the sale; and (b) the Plan does not incur any costs or expenses related to the transaction.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 17 participants and total assets of $510,695.24 as of October 31, 1991. The Plan is sponsored by Earth Consultants, Inc. (the Employer), a Washington Privately-held corporation engaged in geological testing and consultation, with its principal place of business in Bellevue, Washington. Robert Levinson (Levinson) is the sole owner of the Employer, the sole trustee of the Plan, and a participant in the Plan.

2. Among the assets of the Plan are the Properties, described as lot numbers 66, 67 and 68 in Thunder Ridge Estates Division No. 2 in the city of Camano Island, Island County, Washington. The Plan purchased the Properties in 1983 from D&B Properties, Inc. (D&B), located in Bellevue, Washington. Levinson states that he purchased the Properties on behalf of the Plan for the investment potential of the Properties, which were part of a 56-lot development parcel (the Development), of which the remaining 53 lots were purchased by unrelated investors. Levinson represents that D&B is unrelated to and independent of the Plan, and that neither he nor the Employer invested in the Development. The Plan paid $5,000 for each of the Properties, a total of $15,000, pursuant to an appraisal of the Development by Edwin Muehlbach and Monty McCormick, professional real property appraisers in Redmond, Washington. Messrs. Muehlbach and McCormick determined that the undeveloped lots in the Development had values of $5,000 to $6,000, and that the values would increase by an additional $4,000 upon completion of water, power and sewage improvements. The Employer represents that these utility improvements were never completed and the Development remains undeveloped, due to legal problems involving title and deed restrictions which arose subsequent to the Plan's purchase of the Properties. Levinson represents that the since acquisition by the Plan, the Properties have remained idle and unused by any parties, and that he has made substantial efforts to sell the Properties.

Because the Properties failed to succeed as an income-producing investment for the Plan, with no foreseeable change in circumstances, Levinson, as Plan trustee, wishes to divest the Plan of the Properties. He

represents, however, that the local government's strict septic system requirements, which have prevented construction of the Development, also prevent development of the Properties individually. As a result, Levinson states that the Properties are not marketable, and that they lack the necessary water systems to enable their marketability. Levinson represent that there is no foreseeable likelihood that the local government will install a water and septic system for the Development, and, therefore, no foreseeable likelihood of any market for the Properties. Levinson states that if there had been an opportunity, the Plan would have divested of the Properties for any reasonable price. However, Levinson represents that his efforts to sell the Properties, through listings with real estate agencies, and his own independent efforts to secure buyers, have failed. Accordingly, Levinson proposes to purchase the Properties in his individual capacity from the Plan and is requesting an exempting for such transaction under the terms and conditions described herein.

3. Levinson will pay the Plan $15,000 for the Properties, representating $5,000 for each Property, which is the amount which the Plan paid for the Properties. Levinson represents that the Plan has not paid any taxes or insurance on the Properties since their acquisition, and that the expenses relating to the legal problems of the Development were paid by the Employer. Curt Cummings (Cummings), a professional real property appraiser in Camano Island, Washington, determined that as of January 31, 1992, each Property had a market value of $2,500. Levinson will pay the purchase price in cash, and the Plan will not incur any expenses, fees or commissions in connection with the proposed purchase.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will divest of assets which have failed to become income-producing, and for which there is no market in which the Plan has been able to secure a buyer; (2) The Plan will recover its original investment in the Properties; (3) The Plan will receive cash for the Properties, which can be invested in income-producing assets; and (4) The Plan will not incur any expenses, fees or commissions in connection with the proposed transaction.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 523–8881.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of July, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92–17335 Filed 7–22–92; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–262]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Approving Decommissioning Plan and Authorizing Decommissioning; Brigham Young University

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order authorizing Brigham Young University (BYU) to decommission and dismantle their BYU L–77 Research Reactor located on the licensee's campus in Provo, Utah, and to dispose of the components in accordance with the application dated June 28, 1990, as supplemented on July 2, 1991 and March 9, 1992.

Environmental Assessment

Identification of Proposed Action

By application dated June 28, 1990, as supplemented, BYU requested authorization to decommission, decontaminate and dismantle the BYU L–77 Research Reactor, to dispose of its component parts in accordance with the proposed Decommissioning plan for the L–77 Research Reactor (Decommissioning Plan), and to terminate Facility License No. R–109. The BYU L–77 Research Reactor was shut down in May 1982, and has not operated since then. Following the reactor shutdown, the fuel was removed from the reactor and transferred offsite to the Department of Energy. Opportunity for hearing was afforded by a "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" published in the **Federal Register** on August 1, 1991, (56 FR 36851). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Need for Proposed Action

The proposed action is needed in order to terminate the facility license

and transfer the area to the university for unrestricted use.

Environmental Impact of the Proposed Action

All proposed operations in connection with decommissioning and decontamination of the BYU reactor will be carefully planned and controlled, all contaminated components will be removed, packaged, and shipped offsite, and radiological control procedures will be in place and implemented to ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

All decontamination will be performed by trained personnel in accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The NRC staff has calculated that the collective dose equivalent to the BYU staff and public for the project will be less than 0.5 person-rem.

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the Brigham Young University L–77 Research Reactor, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

The staff has also determined that the proposed activities will not result in any significant impacts on air, water, land, or biota in the area or have any other significant environmental impact.

Alternatives Use of Resources

The only alternative to the proposed decommissioning, dismantling and decontamination activities is to have BYU maintain possession of the reactor. This approach would include monitoring and reporting for the duration of the safe storage period. However, Brigham Young University intends to use the area for other purposes. The alternative of not decommissioning reactors was rejected in the Generic Environmental Impact Statement on Decommissioning, NUREG–0586. No alternative appears that will have different or lesser effect on the use of available resources, and other alternatives need not be evaluated.

Agencies and Persons Consulted

The Idaho National Engineering Laboratory, under contract to the NRC, assisted in the preparation of the Safety Evaluation Report for the decommissioning of the BYU L–77 Research Reactor.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. The Commission concludes that the proposed action will not have a significant effect on the quality of the human environment for the reasons set out above.

For detailed information with respect to this proposed action, see the application for decommissioning, dismantling, decontamination and license termination dated June 28, 1990, as supplemented, and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 17th day of July 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 92–17422 Filed 7–22–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology; Meeting

ACTION: Notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology (the "Council") will meet on August 6–7, 1992, in Los Altos Hills, California on the "Rancho Grande" ranch on Big Sur. The Council will convene at approximately 9 a.m. on Thursday, August 6, 1992, with this session ending at approximately 5 p.m. On Friday, August 7, 1992, the meeting will begin at approximately 9 a.m. with this session ending at approximately 5 p.m.

TYPE OF MEETING: Open.

AGENDA: The Council will be discussing its strategic plan for the next year. No specific topics are set on the agenda. The Council will meet solely to discuss possible areas of interest and concern over the next year. Persons wishing to attend the meeting are requested to contact Ms. Ann Barnett, (202) 395–4692, prior to 3 p.m. on August 4, 1992.

Dated: July 20, 1992.

Philip W. Bolus,

Special Assistant and Counsel, Office of Science and Technology Policy.

[FR Doc. 92–17377 Filed 7–22–92; 8:45 am]

BILLING CODE 3170–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), The FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator pursuant to the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the

Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number of the Administrator's final decisions and orders in civil penalty cases.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). Only the subject-matter index will be published cumulatively. Both the order number index and the digests will be non-cumulative.

In a notice issued on January 25, 1991, the FAA published the first supplement to the indexes and digests herein described, which included the decisions and orders issued by the Administrator from October 1, 1990 through December 31, 1990. 56 FR 4886; February 6, 1991. In a notice issued on May 1, 1991, the FAA published the second supplement, which included decisions and orders issued by the Administrator from January 1, 1991 through March 31, 1991. 56 FR 20250; May 2, 1991. In a notice issued on July 3, 1991, the FAA published the third supplement, which included decisions and orders issued by the Administrator from April 1, 1991 through June 30, 1991. 56 FR 31984; July 12, 1991. In a notice issued on October 8, 1991, the FAA published the fourth supplement, which included decisions and orders issued by the Administrator between July 1, 1991 and September 30, 1991. 56 FR 51735; October 15, 1991. In a notice issued on January 13, 1992, the FAA published the fifth supplement, which included decisions and orders issued by the Administrator between October 1, 1991 and December 31, 1991. 57 FR 2299; January 21, 1992. In a notice issued on April 3, 1992, the FAA published the sixth supplement, which included decisions and orders issued by the Administrator between January 1, 1992 and March 31, 1992. 57 FR 12359 (April 9, 1992).

As noted at the beginning of each of these documents, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

Civil Penalty Actions

Decisions and Orders Issued by Administrator

Index by Order Number

(This supplement includes decisions and orders issued by the Administrator from April 1, 1992 through June 31, 1992.)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

92-28, (4/1/92).	Delta Air Lines, CP91S00120	
92-29, (4/15/92).	Paul B. Haggland, Jr., CP91AL0161	13.221
92-30, (4/27/92).	Edward Clinton, CP91EA0253	
92-31, (5/5/92).	Charles D. Eaddy, CP90AL0308	13.221(a)
92-32, (5/5/92).	Florence L. Barnhill, CP89GL0406	13.205;13.232(a
92-33, (5/15/92).	Port Authority of NY & NJ, CP91EA0425	
92-34, (5/18/92).	Lester Glen Carrell, CP91SW0385	13.233(c); 13.233(d)(2)
92-35, (5/26/92).	Bay Land Aviation, CP91EA0368	13.233(c); 13.233(d)(2)
92-36, (5/26/92).	Southwest Airlines Co., CP90WP0066	13.233(c); 13.233(d)(2)
92-37, (6/15/92).	Salvatore Giuffrida, CP91EA0289	25.855(f); 121.317(h); 121.318(e); 121.571(b) & (1)
92-38, (6/15/92).	Monica Cronberg, CP91WP0266	107.21(a)(1)
92-39, (6/15/92).	Thomas A. Beck, CP91EA0424	13.233 (c) & (d)(1)
92-40, (6/15/92).	Michael Edward Wendt, CP89GL0084	91.75(b); 91.9
92-41, (6/24/92).	Michael Moore & Sabre Associates, CP90SO0360 & CP90SO0367	
92-42, (6/29/92).	Jeff Jayson, CP91WP0653	

Civil Penalty Actions—Decisions Issued by the Administrator

SUBJECT MATTER INDEX

(Current as of June 30, 1992)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

13.221	92–29 Haggland; 92–31 Eaddy.
13.222	
13.223	91–12 and 91–31 Terry & Menne.
13.224	90–26 Waddell; 91–4 [Airport Operator].
13.225	
13.226	
13.227	90–21 Carroll.
13.228	92–3 Park.
13.229	
13.230	92–19 Cornwall.
13.231	92–3 Park.
13.232	89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill.
13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 Delta; 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines Co.; 92–39 Beck; 92–45 O'Brien.
13.234	90–19 Continental Airlines; 90–31 Carroll; 90–32 Continental Airlines; 90–38 Continental; 91–4 [Airport Operator].
13.235	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
14.01	91–17 KDS Aviation.
14.04	91–17 KDS Aviation; 91–52 KDS Aviation.
14.05	90–17 Wilson.
14.20	91–52 KDS Aviation.
14.26	91–52 KDS Aviation.
25.855	92–37 Giuffrida.
39.3	92–10 Flight Unlimited, Inc.
43.9	91–8 Watts Agricultural Aviation.
43.13	90–11 Thunderbird Accessories.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation.
91.8 (91.11 as of 8/18/90)	92–3 Park.
91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited, Inc.
91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.173 (91.417 as of 8/18/90)	91–8 Watts Agricultural Aviation.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator].
107.13	90–12 Continental Airlines; 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
107.20	90–24 Bayer.
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg.
108.5	90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 Delta Air Lines, Inc.
108.7	90–18 Continental Airlines; 90–19 Continental Airlines.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis
108.13	90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines.
121.133	90–18 Continental Airlines.
121.317	92–37 Giuffrida.
121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines.
121.517	92–37 Giuffrida.
135.25	92–10 Flight Unlimited.
135.87	90–21 Carroll.
145.53	90–11 Thunderbird Accessories.
145.61	90–11 Thunderbird Accessories.

191	90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines.
298.1	92–10 Flight Unlimited, Inc.
302.8	90–22 USAir.
49 CFR:	
821.33	90–21 Carroll.
Statutes:	
5 U.S.C.:	
504	90–17 Wilson; 91–17 KDS Aviation.
552	90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines.
554	90–18 Continental Airlines; 90–21 Carroll.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines.
11 U.S.C.:	
362	91–2 Continental Airlines
28 U.S.C.:	
4262	90–21 Carroll.
49 U.S.C. App.:	
1356	90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines.
1357	90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited.
1475	90–20 Degenhardt; 00–0012 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator].
1486	90–21 Carroll.

Civil Penalty Actions Decisions and Orders Issued by the Administrator

Digests

(This supplement includes decisions and orders issued by the Administrator from April 1, 1992 through June 30, 1992.)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1992 through March 31, 1992. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g. April, July, October, and January of each year).

In the Matter of Delta Air Lines

Order No. 92–28 (4/1/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Paul B. Haggland, Jr.

Order No. 92–29 (4/15/92)

Continuance of Hearing. After a hearing at which Respondent failed to appear, the law judge held that Respondent had violated the FAR by not having met the requirements for check airmen. Respondent appealed to the Administrator, who remanded the case to the law judge to determine whether Respondent should have been granted a continuance of the hearing.

Respondent had claimed that he could not attend the hearing because he had to attend a mandatory FAA training course on the same date. The Administrator found that although Respondent failed to adequately explain his reasons for seeking a continuance, the law judge should have sought additional information from Respondent before ruling on his request. If the course was mandatory and no similar course was soon available, then Respondent was forced to choose between FAA training required by his employment, and defending himself against FAA charges at a hearing. The Administrator stated that attendance at a mandatory FAA safety course, when adequately explained and timely raised, should be a valid reason for rescheduling the hearing.

In the Matter of Charles D. Eaddy

Order No. 92–31 (5/5/92)

Notice of Hearing. The Administrator remanded this matter to the law judge to determine whether Respondent had received the Notice of Hearing advising Respondent of the exact time, date and location of the hearing.

The Notice of Hearing at issue is required under section 13.221(a) of the FAR, 14 CFR 13.221(a). Respondent denied receipt of the Notice of Hearing. The law judge stated in a subsequent notice that his case file showed that the Notice of Hearing had been served on Respondent at his correct address by regular mail. The law judge further explained that there was no envelope in his file indicating a returned piece of mail by the Postal Service. The Administrator found that the facts of this case gave rise to a rebuttable presumption that Respondent had received the Notice of Hearing. Respondent's denial of receipt rebutted the presumption. The issue of receipt of the Notice of Hearing became one to be resolved by the law judge, based on the totality of the circumstances.

In the Matter of Florence L. Barnhill

Order No. 92–32 (5/5/92)

Law Judge's Jurisdiction. The law judge did not have authority to reopen the case after he issued his order granting summary judgment. When a law judge issues an initial decision, his or her jurisdiction over a case ends. The Rules of Practice do not provide for reconsideration of an initial decision by a law judge. Assuming, *arguendo*, that a law judge has the power to correct or otherwise modify his or her decision within a reasonable time, that time would in any event have expired when the decision became an "order assessing civil penalty," *i.e.*, when Respondent failed to file a timely appeal from the law judge's initial decision.

De Facto Answer. The law judge erred in concluding that Respondent's letter to the FAA inspector, submitted more than 6 months before the complaint was issued, was a *de facto* answer to the complaint. The letter to the inspector *preceded* the complaint in time. To find that it was a *de facto* answer would be to eliminate, in effect, the requirement in the Rules of Practice for an answer to the complaint.

Material Misrepresentation. The law judge erred in finding that agency counsel materially misrepresented the facts in Complainant's motion for summary judgment by failing to apprise the law judge of Respondent's letter to the inspector. Agency counsel's representations to the law judge that Respondent failed to file an answer were made in good faith. They were based on a reasonable interpretation of the Rules of Practice, which is supported not only by the Rules themselves, but also by the decision in *In the Matter of Metz*, FAA Order No. 90–3 (1/29/90).

Sanction. The law judge's order granting summary judgment assessed a civil penalty of $2,000. After inquiry at the hearing into Respondent's financial situation, however, the law judge reduced the proposed civil penalty from $2,000 to $600, payable in 12 monthly installments of $50. Complainant states on appeal that it now believes that a civil penalty of only $550 is appropriate in this case. A civil penalty in the amount of $550, payable in 11 monthly installments of $50, is assessed.

In the Matter of the Port Authority of New York and New Jersey

Order No. 92–33 (5/15/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Lester Glen Carrell

Order No. 92–34 (5/18/92)

Failure to Perfect. Respondent failed to perfect his appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of Bay Land Aviation, Inc.

Order No. 92–35 (5/26/92)

Failure to Perfect. Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of Southwest Airlines Co.

Order No. 92–36 (5/26/92)

Failure to Perfect. Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of Salvatore Giuffrida

Order No. 92–37 (6/15/92)

Smoking in Aircraft Lavatory. Respondent was smoking in the lavatory of a flight. He claimed that he did not know that smoking in the lavatory was prohibited. The law judge held that Respondent could not afford to pay the $1000 civil penalty sought by Complainant and reduced the penalty to $500 payable in 10 monthly installments. Respondent appeals, arguing that he cannot even afford to pay that amount.

Sanction. Respondent's monthly income is $1400, his rent and utilities are $900 per month, and he must support a family of 4. Smoking in an aircraft lavatory poses such a serious risk to safety that ordinarily a $10000 civil penalty is warranted. But, under these circumstances, a $200 civil penalty, payable in 10 monthly installments, would be adequate to deter Respondent from smoking in a lavatory again.

In the Matter of Monica Cronberg

Order No. 92–38 (6/15/92)

Inability to Pay Sanction. The Administrator affirmed the law judge's finding that Respondent was able to pay a reduced sanction of $650 for attempting to enter a sterile area at an airport with a loaded gun in violation of 14 CFR 107.21(a)(1). Respondent's argument that her sanction should be reduced by the same amount as those assessed other respondents with similar violations at the same hearing, was rejected. A respondent's inability to pay a civil penalty is determined based upon that individual's financial circumstances. The law judge found that Respondent had sufficient income to pay the reduced fine, while the other respondents at that hearing did not.

The Administrator noted that the law judge could have taken into account the income of Respondent's husband. The fact that Respondent paid one half of the household expenses and maintained a separate bank account did not exempt her joint income from review for determining her ability to pay the sanction.

In the Matter of Thomas A. Beck

Order No. 92–39 (6/15/92)

Appeal Perfected. The Administrator construed Respondent's timely notice of appeal as an appeal brief because it was sufficiently detailed to met the requirements for an appeal brief under 14 CFR 13.233(d)(1).

In the Matter of Michael Edward Wendt

Order No. 92–40 (6/15/92)

Runway Incursion; Adequacy of Visual Cues. Because a number of the usual cues enabling a pilot to identify an intersecting runway were not present, the law judge's finding of a violation of 14 CFR 91.75(b) and 91.9 (1988) is reversed.

Air Traffic Control Contribution. Although no specific air traffic control procedure was violated, it is at least arguable that poor air traffic control coordination and technique was a factor in this incident.

In the Matter of Michael K. Moore and Sabre Associates

Order No. 92–41 (6/24/92)

Late-filed Request for Extension of Time. With the agreement of Respondent, Complainant sought an extension of time to file its reply brief. Complainant asserted in the letter that it had filed two requests for extension of time to file the reply brief, but had received no response from the Administrator. The Appellate Docket had no record of those requests. However, it is likely that those requests would have been granted had they been received by the Appellate Docket, as Complainant apparently believed they had been. Consequently, good cause was found for Complainant's late-filed request for an extension of time.

In the Matter of Jeff Jayson

Order No. 92–42 (6/29/92)

Withdrawal of Appeal. Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

Commercial Reporting Services. In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. As a result, the

Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Avlex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106.

Another publishing company, Clark Boardman Callaghan [50 Broad Street East, Rochester, NY 14694, (716) 546–1490], is expected to release its publication of the civil penalty decisions and orders soon.

The Administrator's decisions and orders in civil penalty cases are also available now on the following databases: Compuserve; Fedix; and Genie. Finally, the decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

The Administrator's final decisions and orders, indexes, and digests are also available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

In addition, these materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

Issued in Washington, DC, on July 16, 1992.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 92–17360 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

Proposed Modification of Terminal Control Area at Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meeting.

SUMMARY: This notice announces a fact-finding informal airspace meeting to solicit information from airspace users and others concerning a proposal to modify the Terminal Control Area (TCA) at Orlando, FL. The proposed modification to the TCA is in response to user suggestions for changes that would make the TCA design more efficient and user friendly.

DATES: Comments must be received on or before November 23,1992. This informal airspace meeting will be held on September 23, 1992.

ADDRESSES: The location of the informal airspace meeting is as follows:

Date: Wednesday, September 23, 1992.

Time: 7 p.m. to 10 p.m.

Location: Orlando Executive Airport, Terminal Building Lobby, Orlando, FL 32803.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Wilburn T. Mowdy, Air Traffic Manager, Airport Traffic Control Tower, Orlando International Airport, 9353 Airport Boulevard West, Orlando, FL 32827; telephone: (407) 648–6291.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) This meeting will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) This meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. This meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. This meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) This meeting will not be formally recorded. However, a summary of the comments made at this meeting will be filed in the docket.

AGENDA

Opening Remarks and Discussion of Meeting Procedures

Public Presentations

Closing Comments

Issued in Washington, DC, on July 15, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-17370 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

Proposed Establishment of Terminal Control Area at Cincinnati/Northern Kentucky International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of informal airspace meetings.

SUMMARY: This notice announces fact-finding informal airspace meetings to solicit information from airspace users and others concerning a proposal to establish a Terminal Control Area (TCA) for the Cincinnati, OH, and Covington, KY, areas. The establishment of a TCA is being considered due to the increased volume of traffic arriving and departing the Cincinnati/Northern Kentucky International Airport.

DATES: Comments must be received on or before November 5, 1992. These informal airspace meetings will be held on September 3 and September 4, 1992.

ADDRESSES: The locations of the informal airspace meetings are as follows:

Date: Thursday, September 3, 1992.

Time: 7 p.m. to 10 p.m.

Location: Environmental Protection Agency, 26 W Martin Luther King Drive, Cincinnati, OH.

Date: Friday, September 4, 1992.

Time: 7 p.m. to 10 p.m.

Location: Northern Kentucky University, Louie B. Nunn Drive, University Center Theater, Highland Heights, KY.

Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Wayne Goswick, Air Traffic Manager, Airport Traffic Control Tower, Cincinnati/Northern Kentucky Airport, Tower Drive, Hebron, KY 41048; telephone: (606) 283-3611.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the Administrator, FAA Southern Region. Each participant will be given an opportunity to make a presentation, although a time limit may be imposed.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation so that timeframes can be established. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel. These meetings may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Position papers or other handout material relating to the substance of the meetings may be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded. However, a summary of the comments made at these meetings will be filed in the docket.

Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments

Issued in Washington, DC, on July 15, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-17371 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

DATES: The meeting will be held August 26-27, 1992, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Maintenance Conference Room, USAir Building #4, Commerce Drive, Pittsburgh, Pennsylvania, 15275.

FOR FURTHER INFORMATION CONTACT: Daniel C. Beaudette, Executive Director, 800 Independence Avenue, SW., Washington, DC 29591, telephone (202) 267-7804.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel to be held August 26-27, 1992. The meeting agenda will include:

- Opening comments.
- Background briefings.
- Public comments.
- Future operations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before August 19, 1992, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Washington, DC, on July 17, 1992.

Daniel C. Beaudette,

Executive Director, Pilot and Aviation Maintenance Technician, Shortage Blue Ribbon Panel.

[FR Doc. 92-17369 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Flagstaff Pulliam Airport, Flagstaff, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Flagstaff Pulliam Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Standards Section, AWP-621, P.O. Box 92007, WPC, Los Angeles, California 90009.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Lynda S. Christensen, Finance Manager of the City of Flagstaff at the following

address: City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Flagstaff under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: John P. Milligan, Supervisor, Standards Section, AWP-621, Federal Aviation Administration, P.O. Box 92007, WPC, Los Angeles, California 90009, Telephone: (310) 297-1029.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Flagstaff Pulliam Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 1, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Flagstaff was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: November 30, 2014.

Total estimated PFC revenue: $2,463,581.

Brief description of proposed project(s): Prepare tentative plat; prepare drainage study; prepare master plan; construct new terminal building; construct utilities to new terminal building including electrical, natural gas, waste water, and water; construct access road to new terminal building; construct terminal apron at new terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Air Ambulance, Air Taxi/Commercial Services, Large Charter, and Government Aircraft.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Western-Pacific Regional Headquarters, Airports Division, room 3E23, 15000 Aviation Blvd., Hawthorne, California 90261

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Flagstaff.

Issued in Hawthorne, California on July 1, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-17372 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fanning Field, Idaho Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fanning Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Seattle Airports District Office, SEA-ADO, Federal Aviation Administration, 1601 Lind Avenue SW, suite 250, Renton, WA 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James H. Thorsen, Director of Aviation for the city of Idaho Falls at the following address: 2140 North Skyline Drive, Idaho Falls, Idaho 83402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to City of Idaho Falls under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra M. Simmons, Civil Engineer, (206) 227-2656; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055-4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fanning Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Ominbus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 10, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Idaho Falls was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 29, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $1,500,000.00.

Brief description of proposed project(s): Safety area improvements; Install access control system; Purchase Aircraft Rescue and Firefighting vehicle; Construct ground level gate with security door; Install handicap access lift device.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue, SW., suite 540; Renton, Washington 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Fanning Field.

Issued in Renton, Washington on July 10, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-17372 Filed 7-22-92; 8:45 am]

BILLING CODE 4910-13-M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 1992, there were eight applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate of PFC approvals

and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of San Jose, San Jose, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $29,228,826.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: August 1, 1995.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use: Communications center upgrade, Fire truck replacement, Handi-lift replacement, Noise attenuation, Noise monitoring system upgrade, Noise remedy/land acquisition, Security access control system.

Brief Description of Projects Approved to Impose: Control tower site restoration, Fire station remodel, Runway 30L extension, Sign program.

Brief Description of Projects Disapproved: Advanced planning.

Determination: The draft chapter 4 of FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, states that continuous planning efforts such as this project proposed by the city of San Jose are AIP eligible only when accomplished by "* * * airport sponsors who operate two or more airports * * * if they are the authorized area-wide planning agency." Since the city of San Jose does not fit this definition, planning, design, and engineering services unrelated to specific eligible capital projects are ineligible under AIP criteria and, therefore, are ineligible under PFC criteria.

Fuel farm cleanup.

Determination: This project is not AIP eligible, therefore, not PFC eligible.

Automated vehicle identification system.

Determination: This equipment is not needed to meet airport safety requirements under part 139 or airport security requirements under part 107 and is not AIP eligible, therefore, not PFC eligible.

Decision Date: June 11, 1992.

For Further Information Contact: Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, FAA Airports District Office, 831, Mitten Road, room 210, Burlingame, California, 94010–1303, (415) 876–2805.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Type: Impose PFC.

PFC Level: $2.00

Total Approved Net PFC Revenue: $255,559.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: November 1, 1993.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators, Foreign air carriers.

Determination: Approved. The FAA has determined that each of the proposed classes account for less than 1 percent of the total enplanements at Charlottesville-Albemarle Airport (CHO). The FAA notes that the class entitled "foreign air carriers" includes only those foreign carriers that operate at CHO and does not include foreign carriers which write interline tickets which include a CHO enplanement.

Brief Description of Projects Approved: Relocation of Taxiway A, Snow equipment storage building, ARFF vehicle, Snow vehicle/plow, General aviation south taxiway and ramp.

Brief Description of Projects Disapproved: Master plan update.

Determination: The FAA has concluded that the Charlottesville-Albemarle Airport Authority has not met either the requirements or the intent of section 158.23 for this project.

Land acquisition.

Determination: This project cannot be determined to be AIP eligible and, therefore, is ineligible under PFC criteria.

Brief Description of Project Withdrawn: ARFF training facility.

Determination: The Charlottesville-Albemarle Airport Authority withdrew this project from consideration by letter dated February 26, 1992.

Decision Date: June 11, 1922.

For Further Information Contact: Mr. Robert B. Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia, 22046, (703) 285–2570.

Public Agency: Missoula County Airport Authority, Missoula, Montana.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,900,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: August 1, 1997.

Class of Air Carriers not Required to Collect PFC's: Air taxis and charter carriers, which operate only as on demand carriers and do not provide regularly scheduled air transportation service, serving Missoula County Airport.

Determination: Approved. The FAA has determined that each class does not exceed 1 percent of the total enplanements.

Brief Description of Projects Approved: Taxiway "P" realignment, extension, and rehabilitation, Terminal access improvements, Terminal expansion project, Land acquisition for noise control purposes, Airfield vacuum broom.

Decision Date: June 12, 1992.

For Further Information Contact: Mr. David P. Gabbert, Manager, Helena Airports District Office, FAA Building, room 2, Helena Regional Airport, Helena, Montana 59601, (406) 449–5271.

Public Agency: City of Palm Springs, Palm Springs, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $44,612,350.

Earliest Permissible Charge Effective Date: October 1, 1992.

Duration of Authority to Impose: June 1, 2019.

Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi operations.

Determination: Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved: Airport terminal expansion, Phase IA, Airport terminal expansion. Phase IIA.

Decision Date: June 25, 1992.

For Further Information Contact: Mr. John P. Milligan, Supervisor Standards Section, AWP–621, Federal Aviation Administration, P.O. Box 92007, WWPC, Los Angeles, California, 90009, (310) 297–1029.

Public Agency: Port of Oakland, Oakland, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $8,736,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: September 1, 1993.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved: Handicap upgrades in Terminal One, Expansion to Terminal One baggage area, Upgrade and apply sealer to ramps, Terminal One and air cargo building, Install computerized security access control system, Overlay Taxiway 5 between Runway 27L and Taxiway 10, Overlay Taxiway 5 between Taxiway 10 to Taxiway 1 and widen, Upgrade Taxiway 1 (sections 1–1, 1–2, 1–3), Install emergency notification system, Install runway and taxiway signs, Remote aircraft rescue and firefighting (ARFF) pad and shelter, Purchase new ARFF vehicle, Overlay of inbound airport drive, Replace emergency water valve, Purchase of noise monitoring system, Planning studies.

Brief Description of Projects Disapproved: Recarpet Terminal Two, Recoat aircraft loading bridges.

Determination: These projects are not AIP eligible and therefore are not PFC eligible.

Brief Description of Project Withdrawn: 6-acre air cargo apron and taxilane.

Determination: The Port of Oakland deleted this project from its application by letter to the FAA dated June 17, 1992.

Decision Date: June 26, 1992.

For Further Information Contact: Mr. Joseph R. Rodriquez, Supervisor, Planning and Programming Section, FAA Airport District Office, 831 Mitten Road, Room 210, Burlingame, California, 94010–1303, (415) 876–2805.

Public Agency: Division of Aviation, Philadelphia, Pennsylvania.

Application Type: Impose PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $76,169,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: July 1, 1995.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved: Rescue boat facility, Upgrade of airfield signage system, Airfield expansion (land acquisition), Fire alarm system expansion, Terminal A Prime, phase I, Central heliport, Terminals B and C improvements, Ground transportation improvements, Land acquisition (east of Island Avenue, and north of Enterprise), Moving sidewalks, Terminals D and E improvements, Land acquisition (southeast corner of Island Avenue and Bartram), Land acquisition (Island Avenue south of Route 291).

Brief Description of Projects Withdrawn: Airfield expansion program, Relocation of State Route 291.

Determination: The Division of Aviation, withdrew these projects from its application by letter to the FAA dated June 23, 1992.

Decision Date: June 29, 1992.

For Further Information Contact: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzsdale Drive, Suite 1, Camp Hill, Pennsylvania 17011, (717) 782–4548.

Public Agency: Sarasota Manatee Airport Authority, Sarasota, Florida.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $38,715,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: September 1, 2005.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved: Federal Aviation Regulations Part 150 program funding, Airfield drainage improvements, Environmental assessment, Clear zone land acquisition—Runway 14/32 extension, Lengthen Runway 14/32, Rehabilitate Taxiway "A", Construct Airside "A", Construct Airside "A", Rehabilitate Taxiways "D", "I", and "C", Land Acquisition—parallel Runway 14/32, Construction—parallel Runway 14/32.

Brief Description of Projects Disapproved: Master plan update, Environmental assessment, Construct Airside "C".

Determination: These projects will not meet the requirement under § 158.33 which requires implementation within 5 years of the charge effective date of September 1, 1992. Drainage improvements—U.S. 41 to Sarasota Bay.

Determination: The scope of this project will not be determined until the completion of a drainage study. AIP eligibility for off-airport drainage projects is limited to outfall drainage ditches.

Decision Date: June 29, 1992.

For Further Information Contact: Mr. Bart Vernace, Airports Plans and Programs Manager, Federal Aviation Administration, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827–5397, (305) 420–6582.

Public Agency: Akron-Canton Regional Airport Authority, Akron, Ohio.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,594,000.

Earliest Permissible Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: August 1, 1996.

Class of Air Carriers not Required to Collect PFC'S: Part 135 operators.

Determination: Approved. The proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved: Waterline installation, Gate area widening, Airfield maintenance and aircraft rescue and firefighting building expansion, Emergency generator, Aircraft rescue and firefighting (ARFF) vehicle, Baggage makeup area expansion and renovation, Snow removal equipment, Renovate/construct aircraft parking apron, construct security fence, and install airfield signage, Heavy duty airport sweeper, ARFF vehicle, Land acquisition (Goodyear property), Land acquisition (Clark, Yoders, and Nibert properties), Overlay Taxiway E, inner taxiways, and general aviation parking area including drainage and pavement marking.

Brief Description of Projects Disapproved: Local AIP matching funds for fiscal years 1993, 1994, 1995, and 1996.

Determination: Sufficient information on project descriptions and justifications was not provided in the application to allow the FAA to determine whether the projects meet the requirements of section 158.15. Snow removal equipment, Overlay of Runway 1/19 and parallel taxiway, Snow removal equipment, Terminal building expansion, Overlay Runway 5/23 and parallel taxiway.

Determination: Section 158.33(a)(1) requires the public agency to begin implementation of a project no later than 2 years after receiving approval to use PFC revenue on that project. The schedule submitted with the application shows implementation dates of April

1995 or later for the six disapproved projects listed above.

Decision Date: June 30, 1992.

For Further Information Contact: Mr. Peter Serini, Manager, Federal Aviation Administration Airports District Office, Willow Run Airport, east, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300.

Cumulative List of Applications Previously Approved

Huntsville International Airport, Huntsville, Alabama

Date approved: March 6, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $20,831,051.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: November 1, 2008.

Muscle Shoals Regional Airport, Muscle Shoals, Alabama

Date approved: February 18, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $104,100.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: February 1, 1995.

Lake Tahoe Airport, South Lake Tahoe, California

Date approved: May 1, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $928,747.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: March 1, 1997.

Stapleton International Airport/Denver International Airport, Denver, Colorado

Date approved: April 28, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $2,330,734,321.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: January 1, 2026.

Savannah International Airport, Savannah, Georgia

Date approved: January 23, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $39,501,502.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: March 1, 2004.

Capital Airport, Springfield, Illinois

Date approved: March 27, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $682,306.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: May 1, 1994.

Minneapolis-St. Paul International Airport, Minneapolis, Minnesota

Date approved: March 31, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $23,408,819.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: April 1, 1993.

Golden Triangle Regional Airport, Columbus, Mississippi

Date approved: May 8, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $1,693,211.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: September 1, 2006.

Gulfport-Biloxi Regional Airport, Gulfport, Mississippi

Date approved: April 3, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $384,028.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: December 1, 1993.

Hattiesburg-Laurel Regional Airport, Moselle, Mississippi

Date approved: April 15, 1992.
Level of PFC: $3.00.
Totl approved net PFC revenue: $119,153.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: January 1, 1998.

McCarran International Airport, Las Vegas, Nevada

Date approved: February 24, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $428,054,380.
Earliest charge effective date: June 1, 1992.
Estimated charge expiration date: February 1, 2004.

Greater Buffalo International Airport, Buffalo, New York

Date approved: May 29, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $189,873,000.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: March 1, 2026.

Lawton Municipal Airport, Lawton, Oklahoma

Date approved: May 8, 1992.
Level of PFC: $2.00.
Total approved net PFC revenue: $334,078.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: January 1, 1996.

Tulsa International Airport, Tulsa, Oklahoma

Date approved: May 11, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $8,450,000.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: August 1, 1994.

Portland International Airport, Portland, Oregon

Date approved: April 8, 1992.
Level of PFC: $3.00
Total approved net PFC revenue: $17,961,850.
Earliest charge effective date: July 1, 1992.
Estimated charge expiration date: July 1, 1994.

Memphis International Airport, Memphis, Tennessee

Date approved: May 28, 1992.
Level of PFC: $3.00.
Total approved net PFC revenue: $26,000,000.
Earliest charge effective date: August 1, 1992.
Estimated charge expiration date: December 1, 1994.

Issued in Washington, DC, on July 14, 1992.

Leonard L. Griggs, Jr.,

Assistant Administrator for Airports.

[FR Doc. 92–17374 Filed 7–22–92; 8:45 am]

BILLING CODE 4910–13–M

RESOLUTION TRUST CORPORATION

Statement of Policy on Contracting With Firms That Are Parties to Lawsuits With RTC/FDIC

AGENCY: Resolution Trust Corporation.

ACTION: Statement of policy.

SUMMARY: The Resolution Trust Corporation (RTC) has adopted a policy statement on the application of 12 CFR 1606.4(a)(11) concerning contracting

with firms that are being sued by it, the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). Generally, the RTC does not do business with firms that are being sued by it, the FDIC or FSLIC. However, the RTC may do business with such firms where the contractor can screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and the firm agrees that it will not use its retention by the RTC as a defense in the pending litigation. Where a contractor is subject to multiple lawsuits, or a single suit of major proportions, the revised policy recognizes that, even though individuals and offices can be screened from the RTC contracts, continuing to do business with the firm can no longer be justified on fitness and integrity grounds under 12 CFR part 1606. A determination under this standard will be based on the scope and breadth of pending lawsuits, including the number of lawsuits, total amount claimed, the number of individuals or offices named, and the type of misconduct alleged.

DATES: This policy statement is effective July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416–2029, Carl Gold, Counsel, Division of Legal Services, (202) 416–7327, or Paul Jeddeloh, Contractor Ethics Specialist, Office of Ethics, (202) 416–2832. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

1. Background

Generally, the RTC does not do business with firms that are being sued by it, the FDIC or FSLIC. However, on March 27, 1990, the FDIC/RTC Board of Directors adopted a policy that made it clear that the RTC and FDIC "may" do business with firms despite the presence of litigation if the firm agrees to certain screening devices and certain other conditions and if the firm is otherwise in compliance with the Fitness and Integrity regulations set forth in 12 CFR part 1606. The Board delegated its authority to grant waivers under the policy to the Contractors' Conflicts Committee. The Committee was authorized to find, in its discretion, that despite the presence of litigation with the FDIC, RTC or FSLIC, a firm could meet the minimum standards of fitness and integrity.

The policy is based on a paramount business need for the RTC/FDIC to use private sector firms and on the recognition that firms uniquely suited to provide certain services, including major accounting firms, may otherwise be unavailable to perform services for the RTC. Thus, where doing business with a particular firm will benefit the RTC, and the firm can meet the conditions imposed in these cases, the RTC may, in its discretion, make a determination that the firm meets RTC's minimum standards of fitness and integrity, notwithstanding the fact that it is being sued by the RTC/FDIC/FSLIC.

In such cases, the conditions imposed require the firm to screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and to agree that it cannot use its retention by the RTC as a defense in the pending litigation. Where the "offending" person or office cannot be effectively screened from working on, or influencing, RTC contract work, RTC has declined to contract with such firms.

2. Discussion

As noted above, the primary justification for the litigation policy has been RTC's urgent and immediate need for specific contract services, services that might have been delayed or unavailable if the RTC had refused to do business with firms being sued by it or the FDIC. Now, however, the pool of contractors ready and able to provide a broad range of services to the RTC has significantly expanded, and the business necessity rationale for continued contracting with such firms has been substantially attenuated.

In applying the litigation policy, RTC has generally looked at an individual lawsuit to determine whether the conditions required by the waiver policy can be appropriately applied. As additional suits were filed against a contractor, each was evaluated by the RTC staff without regard to the cumulative impact of multiple pending suits.

However, the filing of multiple suits or a single suit of major proportions or consequences against a contractor raises serious concerns that the firm lacks the competency or fitness and integrity to be an RTC contractor. It may create a presumption that the firm has engaged in widespread or systematic fraud or negligence or has otherwise substantially contributed to banking and/or thrift problems. Under such circumstances, an inherent conflict of interest exists which could adversely effect the ability of the contractor to perform under a contract or to represent the RTC. Furthermore, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations, adopted under the authority of FIRREA, establish a clear policy that, absent a compelling reason to the contrary, the RTC should not be doing business with firms that have contributed to the nation's thrift crisis. Finally, monitoring additional screening requirements imposes an increasing administrative burden on the RTC.

3. General Policy

When an RTC contractor is the defendant in multiple lawsuits or a single suit of major proportions, the RTC will evaluate the litigation to determine whether RTC can continue to contract with that firm. This determination will be based on the scope and breadth of pending lawsuits, including the number of lawsuits, the total amount claimed, the number of individuals or offices named, and the type of misconduct alleged. The fact that the "offending" offices or persons can be screened from RTC work would not be relevant to this evaluation. The following factors are among those that will be considered in determining whether RTC will continue to do business with the contractor:

a. Claims for substantial recoveries indicate a conflict of interest between the firm and the RTC;

b. A large number of lawsuits, particularly naming numerous individuals and offices, raise a legitimate concern of widespread wrongdoing within the firm;

c. Lawsuits that accuse "home office" or high-level officials of wrongdoing raise a legitimate concern of inherent or institutional misfeasance or malfeasance; and

d. Lawsuits accusing the firm of intentional wrongdoing or gross negligence are more significant than those alleging only negligence.

e. A single lawsuit may be so substantial in its claim for damages or in the conduct alleged to indicate a conflict of interest between the firm and the RTC.

The RTC will base its determination to continue to do business with a firm on whether some or all of these factors are present. In weighing these factors, the RTC will also consider whether it has a compelling business need for the services offered by the firm and whether those services are available from a significant number of competing firms.

Where RTC determines that it will do business with a firm in litigation, appropriate screening mechanisms will always be required, and the firm must agree that it cannot use its retention by the RTC as a defense in the pending litigation.

Finally, under previous policy, when the RTC waived the disqualifying effect of pending litigation, it retained the discretion to make an award to a competing firm that was not the subject

of such lawsuits, in circumstances where the competing firm submitted a "substantially equal bid." There have been no instances identified in which the option has been exercised by the RTC. Accordingly, the "substantially equal bid" requirement of previous policy is eliminated.

4. Implementation

The determination of whether a contractor's litigation has reached the critical point at which it no longer meets RTC's minimum standards of fitness and integrity will be made by the RTC Ethics Officer, with the concurrence of the Division of Legal Services, and in consultation with relevant program officials, on a case by case basis. Any such determinations would be periodically revisited.

Upon the filing of any new lawsuit, an RTC contractor will no longer be in compliance with RTC's minimum standards of fitness and integrity unless and until the RTC Ethics Officer determines that the RTC can continue to do business with such contractor. Contractors must inform the Office of Ethics of any suits filed by the RTC/FDIC within ten days after service of process in a manner consistent with 12 CFR 1606.6(e). In this manner, a decision can be made before the firm expends the time and money in preparing bids on future RTC contracts.

In considering whether the RTC has a compelling need for the services offered by the firm and whether there are a significant number of competing firms, the RTC Ethics Officer will consult with relevant program and contracting officials familiar with the firm's work, the RTC's needs and the availability of competing sources.

Finally, as noted above, any determinations to continue to do business with such firms will be subject to appropriate conditions, including the requirement that the firm screen the persons and/or office(s) charged with wrongdoing from work on the RTC contract and agree that it cannot use its retention by the RTC as a defense in the pending litigation. The RTC may, in its discretion, seek independent verification of the efficacy of the contractor's screening process.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 16th day of July, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary

[FR Doc. 92-17175 Filed 7-22-92; 8:45 am]

BILLING CODE 6714-01-M

Statement of Policy on Contracting With Firms With Related Entity Defaults on Financial Obligations

AGENCY: Resolution Trust Corporation.

ACTION: Statement of policy.

SUMMARY: The Resolution Trust Corporation (RTC) has adopted a policy statement on contracting with related entities of firms that are in default on financial obligations to it, the Federal Deposit Insurance Corporation (FDIC), or the Federal Savings and Loan Insurance Corporation (FSLIC) in any of their capacities. RTC policy permits it to contract with components of large business organizations that, as a practical matter, could not provide certifications for all related entities as that term is defined in RTC regulations. See 12 CFR 1606.2(n). In some instances, related entities that had defaulted on obligations owed to the FDIC, RTC, or FSLIC in any of their capacities were excluded from a firm's reporting and certification requirement. Now, however, the RTC's new policy will further restrict contracting with firms whose related entities have defaulted on such obligations.

DATES: This policy statement is effective July 23, 1992. However, contractors that are subject to a decision limiting their "related entities" for reporting and certification purposes will have until November 1, 1992 to come into compliance with this policy.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Supervisory Ethics Specialist, Office of Ethics, (202) 416-2029, Carl Gold, Counsel, Division of Legal Services, (202) 416-7327, or Paul Jeddeloh, Contractor Ethics Specialist, Office of Ethics, (202) 416-2832. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

1. Background

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and RTC regulations adopted under the authority of FIRREA establish a clear policy that, absent a compelling reason to the contrary, the RTC should not be doing business with firms that have contributed to the nation's thrift crisis. See 12 U.S.C. 1441a(p)(6)(E); 12 CFR 1606.4(a)(2-6, 10-11). However, out of necessity, the RTC has, at times, contracted with firms whose related entities were in default on financial obligations, including obligations owed the RTC, FDIC or FSLIC.

During its early years, the RTC was faced with urgent and immediate needs for specific, usually large-scale, contract services. Frequently, the most readily available sources of those services were large firms which, given their size and organizational complexity, faced a massive administrative burden in complying with the full scope of our certification requirements for all their "related entities," as that term is defined at 12 CFR 1606.2(n). Consequently, it has been the policy of the RTC, established pursuant to certain decisions of the Contractor's Conflicts Committee, to limit the reporting and certification requirements of very large firms with respect to certain of their related entities. Similarly, in cases in which "related entities" of large business organizations had unsatisfied financial obligations to the RTC, FDIC, or FSLIC in any of their capacities (RTC/FDIC obligations), it became the policy of RTC, pursuant to decisions of the Contractor's Conflicts Committee, to find that such firms could meet the minimum standards of fitness and integrity under the regulations set forth at 12 CFR part 1606 if the firm's defaulting related entity could be screened off and not allowed to participate in RTC contract work.

2. Discussion

In both cases (limiting the reporting of the activities of certain of a contractor's related entities and making a discretionary determination that a contractor meets RTC's minimum standards of fitness and integrity even though a related entity may have an unsatisfied RTC/FDIC obligation) RTC policy was driven by the urgent and immediate need for a specific contract service. Now, however, RTC has developed a large pool of contractors ready and able to provide a broad range of services to the RTC and to ensure adequate competition. Moreover, under FIRREA, the RTC has very broad discretion in deciding with whom it wishes to do business. Based on recent experience, the RTC had decided that it is appropriate to further restrict RTC contracting with firms whose related entities have unsatisfied RTC/FDIC obligations.

Ultimately, the cost of unsatisfied RTC/FDIC obligations is borne by the American taxpayer. Where the defaulting party is related to a firm that is also doing business with the RTC, any such default requires RTC to carefully re-evaluate our ongoing business relationship with the firm.

Accordingly, in the future, in determining whether a contractor meets the regulatory minimum standards of fitness and integrity in 12 CFR part 1606, RTC will place greater emphasis on any unsatisfied RTC/FDIC obligations of the

contractor's related entities, even if the related entity can be screened off. In short, except under the most extenuating of circumstances, a contractor will be held more accountable for the failure of its related entities to pay such obligations which are in excess of $50,000.00.

RTC recognizes that it has contracted with components of large business organizations pursuant to decisions limiting the contractor's related entity reporting obligation. As noted above, these decisions were based on findings that, due to the size of the ultimate parent firm, the prospective contractor would find it administratively difficult to provide certifications for all "related entities," as defined in the part 1606 regulations. To accommodate such firms, RTC will require certification and reporting from a smaller group of entities, "affiliated business entities."

3. General Policy

An affiliated business entity is defined to be a business organization (*e.g.*, a corporation, partnership, etc.) that is controlled by the contractor, controls the contractor, or is under common control with the contractor. The term "control" is defined in the definition of "related entity" in 12 CFR 1606.2(n). For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

An unsatisfied RTC/FDIC obligation is either a "default" on an obligation to the RTC, FDIC or FSLIC in any of their capacities, as "default" is defined in 12 CFR 1606.2(d) or an unsatisfied final judgment in favor of the RTC, FDIC, or FSLIC or any depository institution under RTC/FDIC control. See 12 CFR 1606.2(g)(2).

It is the policy of the RTC that, any decision limiting a contractor's related entities for reporting and certification purposes notwithstanding, a failure to pay an RTC/FDIC obligation by a contractor's affiliated business entity will be considered in determining whether the contractor meets the minimum standards of fitness and integrity in 12 CFR part 1606. At the time any such unsatisfied RTC/FDIC obligations come to our attention, by whatever means, RTC will evaluate such obligations, and to the extent that a contractor's affiliated business entities have failed to pay such obligations, in a cumulative amount exceeding $50,000, RTC may institute proceedings to exclude the contractor from RTC's contracting program. If the matter is resolved to RTC's satisfaction, the RTC may continue to do business with the firm.

Contractors that are not subject to a decision limiting their "related entities" for reporting and certification purposes continue to be required to provide all the reports and certifications required pursuant to 12 CFR part 1606. On the other hand, contractors that are subject to a decision limiting their "related entities" for reporting and certification purposes will be required to provide reports and certifications required by 12 CFR part 1606 for relevant "affiliated business entities," as set forth below.

a. *Offers* When responding to an RTC solicitation of services, firms previously subject to a limitation on related entity reporting will be expected to make a reasonable effort to report any unsatisfied RTC/FDIC obligation of an affiliated business entity. RTC recognizes that the time constraints associated with responding to solicitations and the complexity of certain firms' organizational structures may make complete certifications difficult, if not administratively impossible. In this context, a reasonable effort will be defined by the totality of the circumstances facing a contractor required to make these certifications, and the failure to report an unsatisfied RTC/FDIC obligation would not be grounds for institution of administrative proceedings to excluding the contractor from the RTC contracting program if the RTC determines that the contractor used its reasonable efforts in completing the certifications.

b. *Annual Report* Contractors that are subject to a decision limiting their related entities will be required to report annually on any affiliated business entities that have unsatisfied RTC/FDIC obligations. Such contractors are expected to use their best efforts to diligently ascertain whether any of their affiliated business entities have any reportable unsatisfied RTC/FDIC obligation. To permit contractors to conduct the research necessary to fulfill this obligation in conjunction with other corporate information gathering projects, each contractor may select the dates of its reporting year. To further assist contractors in this effort, RTC will provide them with quarterly lists of financial institutions under RTC or FDIC control.

4. Implementation

The RTC will consider the impact of any unsatisfied RTC/FDIC obligation on its continuing business relationship with a contractor, and all future decisions granting a prospective contractor's request for limitations on its related entity reporting and certification obligations will specifically exclude from such limitations any unsatisfied RTC/FDIC obligations by the contractor's affiliated business entities.

RTC's Office of Ethics will notify all contractors that are subject to a decision limiting their related entities for reporting and certification purposes of the policy set forth above. Contractors required to file annual reports will notify the RTC Office of Ethics no later than November 2, 1992 of the date on which they intend to file their first such report and all subsequent reports.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 16th day of July, 1992.

Resolution Trust Corporation

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92-17178 Filed 7-22-92; 8:45 am]

BILLING CODE 6714-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 28, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, July 30, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-20: Mr. Frederick T. Spahr of the American Speech-Language-Language-Hearing Association ("ASHA") and ASHA PAC ("ASHA-PAC")
Advisory Opinion 1992-21: Mr. Thomas N. Edmonds on behalf of Mr. James Jay Baker
Draft Final Rule on Petitions for Rulemaking with Statement of Basis and Purpose
Transfers of Funds from State to Federal Campaigns Final Rule
Notice of Proposed Rulemaking on Transfers Between Federal Candidate Committees
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92-17576 Filed 7-21-92; 2:58 pm]

BILLING CODE 6715-01-M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: July 30, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-538 (Final) (Sulfanilic Acid from the People's Republic of China).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Dated: July 20, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-17489 Filed 7-21-92; 9:09 am]

BILLING CODE 7020-02-M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 57, No. 136/Wednesday, July 15, 1992.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, July 21, 1992.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required adding the following item to the agenda at this time and that no earlier announcement was possible.

5612—Letter to FAA evaluating responses to safety recommendations relevant to Continental Airlines Accident

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Dated: July 20, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92-17498 Filed 7-21-92; 2:46 pm]

BILLING CODE 7533-01-M

NATIONAL WOMEN'S BUSINESS COUNCIL

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100-533 as amended, the National Women's Business Council announces a forthcoming Council meeting. This is a business meeting of the Council that will review the status of the upcoming Access to Capital Symposium. Induction of new members will also take place.

DATE: July 29, 1992 8:30 a.m.-4:30 p.m.

PLACE: U.S. Small Business Administration.

STATUS: Open to the public.

CONTACT: Wilma Goldstein, Executive Director or Paula Breitweiser, Hearing Coordinator, National Women's Business Council, 409 Third Street, S.W. Suite 7425, Washington, DC 20024, (202) 205-3850.

Wilma Goldstein,

Executive Director, National Women's Business Council.

[FR Doc. 92-17579 Filed 7-21-92; 3:21 pm]

BILLING CODE 6820-AB-M

federal register

Thursday
July 23, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Aircraft Ground Deicing and Anti-Icing Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 26930; Notice No. 92-9]

RIN 2120-AE51

Aircraft Ground Deicing and Anti-Icing Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed amendment would establish a requirement for part 121 certificate holders to develop an FAA-approved ground deicing/anti-icing program and to comply with that program any time conditions are such that frost, ice, or snow could adhere to the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces.

This rule is necessary because several accidents and the recent International Conference on Airplane Ground Deicing indicate that, under present procedures, the pilot in command may be unable to effectively determine whether the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of all frost, ice, or snow prior to attempting a takeoff.

The proposal is intended to provide an added level of safety to flight operations in adverse weather conditions. This proposed rule and associated airport and air traffic control procedures would provide, to the extent possible, enhanced procedures to allow safe takeoffs during adverse weather conditions.

DATES: Comments must be submitted on or before August 7, 1992. The FAA is not able to provide a longer comment period for this NPRM because the FAA intends to issue a final rule in time to implement the proposed programs before the 1992-93 winter season. Comments received after the comment period closes will not be considered nor will the FAA consider requests to extend the comment period.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AG-10), Docket No. 26930, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26930. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Flight Standards Service, Regulations Branch, AFS-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26930." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 121.629(a) of the Federal Aviation Regulations (14 CFR 121.629(a)) states, in pertinent part, that no person may dispatch or release an aircraft when, in the opinion of the pilot in command or aircraft dispatcher, icing conditions are expected or met that might adversely affect the safety of flight. Section 121.629(b) states, in pertinent part, that no person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surface, or propellers of the aircraft. These requirements, which have been virtually unchanged for over 40 years, are based on what is commonly referred to as the "clean aircraft concept." The basis of this concept is that the presence of even minute amounts of frost, ice, or snow on particular aircraft surfaces (referred to as "contamination") can cause degradation of aircraft performance and changes in aircraft flight characteristics.

When conditions conducive to the formation of frost, ice, or snow on aircraft surfaces exist at the time of takeoff, or it is suspected that these contaminants are adhering to aircraft surfaces, common practice developed by the North American and European aviation community over many years of operational experience is to deice or anti-ice the aircraft before takeoff. Under the Federal Aviation Regulations, in icing conditions, as in all other conditions, ultimate responsibility for determining whether the aircraft is free of contamination—and thus airworthy—rests with the pilots in command.

Aircraft are commonly deiced and anti-iced during icing weather conditions. Deicing is the removal of accumulated frost, ice, or snow from aircraft surfaces by application of heated water followed by undiluted glycol-based fluid or the application of a heated water/glycol solution. Anti-icing is the treatment with undiluted glycol-based fluid to prevent frost, ice, or snow from adhering to aircraft surfaces. Normally, deicing and anti-icing are accomplished by a single application process; however, there may be two separate applications of deicing/anti-icing fluid. Two types of deicing/anti-icing fluids are used. AEA Type I fluids are unthickened fluids that are normally applied as a mixture of glycol and water. These fluids mainly provide protection against refreezing when no delays or only short delays occur between deicing and takeoff. AEA Type II fluids are thickened fluids. They provide protection against refreezing when longer delays occur. Type II fluid is used extensively in Canada and Europe, but is used less often in the United States because it is more expensive than Type I, more difficult to apply, and has a gel consistency that

may reduce a runway's coefficient of friction, thereby reducing an airplane's braking capability. Type II fluid provides longer holdover times. Holdover time is the estimated time deicing or anti-icing will prevent the formation of frost or ice and the accumulation of snow or slush on the treated surfaces of an aircraft.

According to the National Transportation Safety Board (NTSB), in the last 23 years there have been 15 accidents related to the failure to deice aircraft adequately before takeoff. Seven of the 15 accidents were in part 121 passenger-carrying or all-cargo operations. An eighth accident, for which the NTSB has not yet issued a probable cause finding, involved a USAir flight discussed more fully below. In all of these accidents, contamination on the aircraft surfaces during takeoff was the cause or a contributing cause of the accident. Specifically, the part 121 major accidents at least partially caused by ground deicing include the following:

December 27, 1968, Ozark DC–9–15, Sioux City, Iowa.

November 27, 1978, TWA DC–9, Newark, New Jersey.

January 13, 1982, Air Florida B–737, Washington DC.

February 5, 1985, ABX DC–9, Philadelphia, Pennsylvania.

February 5, 1985, BO–S–AIRE, DC–3, Charlotte, North Carolina.

November 15, 1987, Continental DC–9, Denver, Colorado.

February 17, 1991, Ryan DC–9, Cleveland, Ohio.

March 22, 1992, USAir F–28, La Guardia, New York.*

The NTSB investigations of the Air Florida and Continental accidents indicate that ice formation after deicing was a major contributing factor.

At Washington National Airport on January 13, 1982, Air Florida Flight 90, a Boeing 737, crashed into the 14th Street Bridge over the Potomac River shortly after takeoff. At the time of takeoff, the airport was experiencing moderate to heavy snowfall and low visibility. The aircraft failed to achieve a sufficient rate of climb, struck the 14th Street Bridge about 4,500 feet from the departure end of the runway, and crashed into the Potomac River. Seventy-four of the 79 persons aboard the aircraft were killed either on impact or by drowning, and 4 persons in automobiles on the bridge were killed when the vehicles were struck by the descending aircraft.

The aircraft had been deiced before it taxied from the gate area; however, it was exposed to continuing snowfall for about 50 minutes before takeoff. The conversation between the captain and the first officer, recorded by the cockpit voice recorder, showed that they were aware that some snow and ice had accumulated on the aircraft while waiting for takeoff.

The NTSB determined that the probable causes of the accident were the flight crew's failure to use the engine anti-ice (a system that detects and removes ice from the aircraft's engine nacelle and inlet guide vanes) during both ground operation and takeoff, their decision to take off with snow and ice on the airfoil surfaces of the aircraft, and the failure of the captain to reject the takeoff when anomalous engine instrument readings were noticed. Among other things contributing to the accident was the prolonged ground delay between deicing and takeoff.

On November 15, 1987, at Denver's Stapleton International Airport, Continental Airlines Flight 1713, a DC–9, was cleared for takeoff following a delay of approximately 27 minutes after deicing. The takeoff roll was uneventful, but following a rapid rotation, the airplane crashed. Both pilots, one flight attendant, and 25 passengers died. The NTSB concluded that the airplane was adequately deiced before it departed the deice pad. Nevertheless, since the airplane was exposed to a moderate snowstorm in subfreezing conditions for approximately 27 minutes after deicing, the NTSB concluded that portions of the airframe became contaminated with a thin, rough layer of ice. Several surviving passengers reported seeing some ice on engine inlets or patches on the wing after deicing.

According to McDonnell Douglas, even minute amounts of ice or other contaminants (equivalent to medium grit sandpaper) on the leading edges or upper surfaces of the wings of a DC–9–10 series airplane could result in the degradation of wing lift, causing the airplane to stall at lower than normal angles–of–attack during takeoff. The contamination of the airframe surfaces was a contributing factor in the crash of Flight 1713. This contamination of the airframe surfaces could have been eliminated or its formation delayed if the airplane had been anti-iced following the deicing.

These aircraft accidents probably could have been prevented if the pilot had been given more information to help determine whether the aircraft was free of all frost, ice, and snow prior to takeoff.

Until recently, the FAA and the aviation community in general had placed priority on emphasizing the need during icing conditions for the pilot in command to ensure "clean wings" before takeoff. The FAA believed that pilot education appeared key to combatting the threat of wing icing. Although the FAA still believes the pilot in command must ultimately make the decision on whether to take off, and that the decision must be based on a thorough understanding of factors involved in icing, the FAA has determined that the certificate holder must provide the pilot in command with criteria on which to make a proper decision. This proposed rule would require that the pilot in command be provided with information to assist the pilot in determining if the aircraft is free of contamination before takeoff.

In response to a USAir F–28–100 accident at La Guardia Airport on March 22, 1992, the FAA mounted a sharply focused effort to resolve the ground deicing issue before the winter of 1992/1993. USAir flight 405 crashed on takeoff in a snowstorm during nighttime operations. While the NTSB has not yet issued a probable cause finding for this accident, the FAA has proceeded on the assumption that the accident was caused, at least in part, by icing. The airplane had been deiced approximately 35 minutes before takeoff. On May 28 and 29, 1992, as a major part of the effort to resolve the ground deicing issue, the FAA held the International Conference on Airplane Ground Deicing in Reston, Virginia. The FAA has based this proposed rule, in part, on the results of this conference. Recommendations of the conference are discussed later in the preamble.

In April 1992, the FAA received a petition for rulemaking from Edward F. Ford (Docket No. 26848) on the issue of aircraft deicing and anti-icing. Mr. Ford's petition contains a number of proposals that were also discussed at the Reston conference and that are addressed in this NPRM; therefore, the FAA considers this NPRM to be a response to that petition for rulemaking.

NTSB Recommendations

As a result of accident investigations, the NTSB has issued 30 safety recommendations that address issues involving aircraft ground icing and deicing.

These recommendations cover such subjects as informing operators about the characteristics of deicing/anti-icing fluids; informing flight crews about ice formation after deicing; reviewing information that air carrier operators

* The NTSB has not yet established probable cause for this accident.

provide to flight crews on runway contamination and engine anti-ice during ground operations; requiring flight crew inspections before takeoff if takeoff is delayed after deicing; emphasizing to air carrier maintenance departments the importance of maintaining ground support equipment; and requiring air carrier training programs to cover the effect of wing leading edge contamination on aerodynamic performance.

In addition, the number of NTSB recommendations involve issuing airworthiness directives or air carrier operations bulletins directing specific procedures for specific aircraft that have characteristics that make them more susceptible to icing problems.

Previous FAA Actions

The FAA has taken various actions on its own and in response to the NTSB recommendations involving accidents in which ground icing was the cause or a contributing factor. The FAA has disseminated advisory circulars, bulletins, memoranda, informative articles, and notices related to winter operations. The FAA also published Air Carrier Operations Bulletins, Maintenance Bulletins, and Maintenance Action Notices. These materials were intended to impress upon operators the dangers of aircraft wing and control surface contamination and the need to assist the pilot in determining if the aircraft is free of contamination before takeoff.

On December 17, 1982, in response to several icing-related takeoff accidents involving transport category and general aviation airplanes, the FAA issued Advisory Circular 20–117. The purpose of this advisory circular (AC) was to emphasize the clean aircraft concept. This AC was directed to all segments of aviation including aircraft manufacturers; airline engineering, maintenance, service, and operations organizations; and flight crewmembers of all aircraft types and categories. Information in the AC was general and dealt with over a dozen variables.

The AC covered the following areas:

Aircraft deicing and anti-icing.

Preflight inspection.

Pretakeoff inspection.

Common or suggested practices necessary to assure the pilot has adequate supporting information for his/her judgments.

Suggested practices for pilots to assure that the aircraft is free of contamination.

AC 20–117 also contained an extensive bibliography of related FAA and private sector publications, training materials, and other deicing or related information. In 1988, in response to the Continental DC–9–14 accident in Denver, the FAA republished and widely distributed AC 20–117 to ensure that airlines, pilots, and other affected persons were fully apprised of its contents.

For several years, the FAA has conducted research and development on aircraft icing characterization, protection concepts, and deicing/anti-icing fluids. These projects have included among others:

Characterization of worldwide environmental icing conditions (freezing precipitation, mixed conditions, snow, etc.) to provide recommended design criteria for aircraft, ice protection equipment, and deicing facilities.

Development of standard icing severity terminology (i.e., trace, light, moderate, severe) applicable to aviation industry, manufacturers, certification officials, weather forecasters, air traffic controllers, and flight crews.

Determination of the feasibility of development of a device or methodology for predicting the effective time of deicing/anti-icing fluids during freezing precipitation in an operational airport environment.

Field measurements of effective time of advanced anti-icing fluids for various freezing precipitation conditions.

Investigation of the effects of underwing frost and/or ice on the takeoff performance of large transport category aircraft.

Development of a condensed and pocket-sized advisory circular for pilots on contamination.

Assessment of simplified methods for determining holdover times.

Feasibility assessment of predicting holdover times.

Development of a training video tape on aircraft icing.

In September 1988, the FAA organized, coordinated, and co-chaired the joint SAE/FAA Aircraft Ground Deicing Conference in Denver, Colorado. The conference was held to disseminate information to the aviation community and to inspire further knowledge of the principles of aircraft ground deicing and anti-icing.

The Reston Conference

In response to the USAir Flight 405 accident at La Guardia, the FAA held the International Conference on Airplane Ground Deicing on May 28 and 29, 1992, in Reston, Virginia. The conference brought together leading experts from all over the world to share information on the ground deicing/anti-icing of transport category airplanes and to recommend short-term actions for preventing accidents caused by icing and long-term actions for continuing improvement of flight safety under adverse weather conditions.

The two-day conference was attended by representatives from air carriers and air carrier associations, crewmember associations, manufacturers and manufacturing associations, airport operators, and air traffic controllers and other FAA personnel, as well as by scientific experts on weather, deicing fluids, and deicing equipment. Over 800 people attended the conference. Areas covered by working groups at the conference were aircraft design; ground deicing and anti-icing system; air traffic control and sequencing; deicing personnel, procedures, and training; and ice detection, recognition, and crew training.

Two major recommendations made by the working groups that support this rulemaking are: (1) Critical aircraft surfaces must be kept free of frost, ice, and snow; and (2) Each air carrier should have an approved aircraft deicing program that will assure full compliance with the clean aircraft concept. The program should include ground deicing, a comprehensive training program for flight crewmembers, holdover timetables to be used as guidelines, and criteria for determining if a pretakeoff inspection after deicing is needed. (There was no consensus on when a pretakeoff inspection must be conducted.)

The working groups also recommended training of ground personnel and flight crews, appropriate use of Type I and Type II fluids, developing holdover guidelines for Type I and Type II fluids, using pretakeoff inspections when exceeding holdover time guidelines, and establishing procedures for communications between ground and cockpit crews.

Recommendations made at the conference that are beyond the scope of this rulemaking cover long-term actions, including additional research, and actions which pertain to manufacturers, airports, and air traffic controllers.

A complete report on working group recommendations is in the docket established for this NPRM.

The Proposed Rule

As previously discussed, the clean aircraft concept, which for many years has been the basis for federal safety regulations applicable in icing conditions, relies almost exclusively on the pilot in command's responsibility for determining the airworthiness of the aircraft before takeoff. Recent icing-related accidents, together with the research and activities previously

described, have convinced the FAA that a new approach is needed. The pilot in command needs guidance and certificate holder-developed procedures and, under certain conditions, ground personnel support in determining the aircraft's airworthiness in potential icing conditions.

The range of subjects covered by the conference and by FAA research and other actions indicates that the icing problem involves a broad spectrum of factors: Weather conditions and reporting, weather procedures at airports, traffic controllers, air carriers, ground personnel, as well as the technology available to support bad weather operations, such as deicing/anti-icing equipment, deicing/anti-icing fluids, and aircraft design. As the conference illustrates, the problem is being attacked in all of these areas and in varying ways. But all of the knowledge and all of the planning eventually focus on the decision of the pilot in command to take off.

The accident information shows that icing accidents occur at different types of airports and in many different operations. After the USAir accident at La Guardia, the FAA announced its intention to put in place before next winter a rule that would improve safety during icing conditions. This proposed rule, if adopted, would be among the agency's actions to resolve the problem of ground icing. The proposed rule is directed at all part 121 passenger-carrying and cargo-carrying operations. It does not include part 135 operations. Specifically, part 135 accident statistics do not indicate that an urgent ground deicing problem currently exists. The FAA also believes that part 135 flight crewmembers are better able to determine if contaminants are adhering to their aircraft because of both size and design. The FAA will continue to study those part 135 operations that could experience ground icing problems to determine if future rulemaking is needed.

Formulated as a rule affecting operations under Part 121 of the Federal Aviation Regulations, the proposal does not directly affect operations of foreign airlines. Safety regulation of international commercial air transport operations is effected by the state of the operator in accordance with comprehensive standards issued by the International Civil Aviation Organization (ICAO). The FAA actively solicits and shares safety information with other countries. As discussed above, international participation in deliberations leading to the formulation of this rule (the "Reston Conference") has been extensive, and the proposal draws heavily on the experience of other countries. The FAA will continue to work aggressively with other nations' civil aviation authorities to learn from their safety regulatory experiences and share those of the U.S. so that we all may develop and adopt the most effective and efficient regulations to improve the safety of all aircraft during icing conditions. Accordingly, the FAA will request that ICAO initiate a review of pre-takeoff deicing and inspection procedures used by all air carriers.

Other factors, such as airport planning, aircraft design, air traffic control, and deicing/anti-icing technology, are being otherwise addressed and are briefly discussed later in this preamble. This proposed rule is what the FAA, in cooperation with part 121 certificate holders, can do before next winter to assure that the highest practicable standards in operations during icing conditions are met.

The proposed rule would require part 121 certificate holders to develop and comply with an FAA-approved ground deicing/anti-icing program that includes procedures that must be followed whenever ground conditions exist that might result in frost, ice, or snow adhering to the aircraft surfaces unless it uses the alternate inspection procedures described below under "Implementation of Program." The program is intended to provide the pilot in command with more complete information, procedures, and ground support which he or she needs for deciding if takeoff can be safely accomplished. Each program would include a detailed description of how the certificate holder determines that ground deicing/anti-icing procedures must be in effect, who is responsible for deciding that such procedures must be in effect, the operational procedures for implementing ground deicing, and the specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while such procedures are in effect.

The FAA is proposing that, to be approved, each ground deicing/anti-icing program must cover at least the following areas:

(1) Ground training and qualification testing requirements for all flight crewmembers and all other personnel the certificate holder uses in implementing the approved ground deicing/anti-icing program.

(2) Procedures for the use of holdover times.

(3) Deicing/anti-icing and accompanying inspection procedures.

Each of these areas is discussed more fully below.

Training of Flight Crewmembers and Other Personnel

To be approved, ground deicing/anti-icing programs would have to include initial and recurrent ground training and qualification testing for all flight crewmembers, and all other personnel (e.g., aircraft dispatchers, maintenance crews, or contract personnel) the certificate holder uses in implementing its approved program. Initial training for all affected personnel would cover the areas described below and would include airplane-specific training as appropriate. Recurrent training would include a review of areas covered in initial training plus coverage of any changes in a certificate holder's ground deicing/anti-icing program and changes that relate to specific airplanes.

At a minimum, an individual would receive initial and recurrent training in the individual's specific responsibilities and duties as outlined in the certificate holder's program, as well as the certificate holder's overall program and any pertinent airplane-specific requirements. In addition to the above, training would have to address the following areas:

(1) Holdover times developed by the certificate holder, how the calculated holdover times are determined and used, and what variables might adversely affect the calculated holdover times. (See the "Use of Holdover Times" section below for further discussion.)

(2) Aircraft deicing/anti-icing inspection procedures and responsibilities to ensure that the aircraft's wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of contamination.

(3) Procedures for communication between flight crewmembers and other deicing/anti-icing personnel on deicing/anti-icing procedures when those procedures are being used.

(4) Aircraft surface contamination and critical area identification and how aircraft contamination adversely affects aircraft performance and flight characteristics.

(5) The certificate holder's deicing/anti-icing procedures including types of fluids, fluid characteristics, and concentration percentage of these fluids.

(6) Cold weather (not limited to icing conditions) preflight inspection procedures.

(7) Techniques for recognizing contamination on the aircraft.

Other areas that should be included as appropriate are:

(1) Who is responsible for actual deicing/anti-icing for the certificate holder (the certificate holder or a contractor).

(2) Any other systems installed on the aircraft that may provide the pilot with information concerning contamination on the aircraft.

(3) Procedures to be followed if the deicing/anti-icing is interrupted for any reason.

(4) For personnel other than flight crewmembers, operation and capabilities of deicing/anti-icing equipment as well as any equipment required to inspect the aircraft after deicing/anti-icing.

The Use of Holdover Times

Holdover time is the estimated time the application of deicing or anti-icing fluid will prevent the adherence of frost, ice, or snow on the treated surfaces of an aircraft. Holdover time begins when aircraft ground deicing/anti-icing commences and expires when the deicing/anti-icing fluid applied to the aircraft wings, control surfaces, propellers, engine inlets, and other critical surfaces loses its effectiveness.

The Society of Automotive Engineers (SAE) has taken the lead in developing holdover time guidelines for particular freezing point depressant fluids (e.g., Association of European Airlines Type I and Type II fluids). SAE has taken into consideration a number of variables, such as type of fluid, wing surface temperature, type of precipitation, etc., that individually or in combination with others increase a decrease holdover time.

The certificate holder would develop for its approved program holdover timetables based upon information from the SAE-developed tables, the particular aircraft manufacturer, and the deicing/anti-icing fluid manufacturer. The certificate holder would develop and use approved procedures regarding its flight crewmembers' use of these tables. The certificate holder's procedures would include provisions for its flight crewmembers to determine holdover times following aircraft deicing/anti-icing and would prohibit takeoff following expiration of the holdover time unless approved alternative actions are taken.

For certain airplanes without wing leading edge devices (i.e., airplanes commonly referred to as "hard wing"), Airworthiness Directives issued by the FAA require a pretakeoff inspection whether or not a holdover time has been exceeded. Certificate holders operating these hard wing airplanes must include the procedures required by these ADs in their ground deicing/anti-icing programs. The FAA invites comments on the need for a mandatory pretakeoff inspection requirement for any other airplane types.

Takeoff after the expiration of any holdover time would be permitted only if—(1) a pretakeoff inspection has ensured that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, snow; (2) it is otherwise determined that these surfaces are free of frost, ice, or snow; or (3) the wings, control surfaces, propellers, engine inlets, and other critical surfaces have been redeiced and a new holdover time has been determined. A pretakeoff inspection is an inspection of the wings, control surfaces, propellers, engine inlets, and other critical surfaces conducted within five minutes prior to implementing takeoff. This inspection may be accomplished from either inside or outside the aircraft, depending on the aircraft's design. Critical surfaces may be "otherwise determined" to be free of contamination, if, for example, precipitation has ended, ambient temperature has risen significantly, or approved new techniques have been developed for determining whether any surfaces are contaminated.

The certificate holder will develop procedures to allow flight crewmembers to increase or decrease the determined holdover time if changing conditions warrant. The certificate holder will also develop procedures to allow a pilot in command to require a pretakeoff inspection whenever the pilot in command believes one is warranted.

The requirement that holdover times may not be exceeded unless a pretakeoff inspection is accomplished is consistent with a recommendation from one of the working groups at the conference. There was not, however, conference-wide consensus on this issue. Therefore, the FAA invites comments on whether exceeding holdover times should be prohibited. In particular, the FAA is interested in receiving specific information about the cost, if any, that would be caused by a prohibition on exceeding holdover times and about alternative procedures that could ensure an equivalent level of safety.

Inspection Procedures

In addition to procedures for the flight crewmembers to scan the visible areas of the aircraft, each approved ground deicing/anti-icing program would have to include complete pretakeoff inspection procedures (i.e., visual, tactile, aids, etc.). This inspection must be accomplished from outside the aircraft unless the program specifies otherwise. Pretakeoff inspection procedures would be required to cover a variety of contingencies. For example, if weather conditions significantly improve after a deicing, it is possible that a holdover time could be extended so that no pretakeoff inspection is required. Or, if weather conditions deteriorate, it may be necessary to shorten the originally determined holdover time.

The pretakeoff inspection procedures would include coordination procedures between all personnel involved in the inspection. If a facility is available for a remote pretakeoff inspection, procedures for that inspection would be covered in the program.

Implementation of Program

The effective date for all part 121 certificate holders, as stated in the proposed rule, is November 1, 1992. A certificate holder who intends to operate in icing conditions on or after November 1, 1992, would have to have an approved program and would have to operate in compliance with that program. A certificate holder who does not have an approved program or has not implemented its program, would not be allowed to operate aircraft in icing conditions on or after November 1, 1992, unless it uses the alternative inspection procedure described below.

The FAA is aware that requiring all flight cremembers and other affected personnel (e.g., aircraft dispatchers, maintenance crews, contract personnel) to be fully trained and qualified by the effective date could be impractical for some certificate holders both financially and logistically. Therefore, in instances where training cannot be completed as part of a certificate holder's initial and recurrent training programs by the effective date, the certificate holder may submit for approval with its program a training implementation plan. For example, a certificate holder could implement the training requirements by providing initial training to flight crewmembers and other personnel by mailing to them a video cassette, written training and qualification materials, or computer-based instruction that explains and instructs on procedures contained in the certificate holder's deicing/anti-icing program.

The FAA recognizes that, given the short compliance time proposed for this rule, some certificate holders may be unable to submit a program in time for approval prior to the effective date. Other certificate holders who seldom fly in ground deicing conditions may

determine that it is impractical to develop a deicing program. Therefore, in proposed paragraph (d), the rule would allow continued operations under § 121.629 if the certificate holder includes in its operations specifications and complies with a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been inspected to ensure that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, or snow. This inspection must occur within five minutes before takeoff. The inspection must be accomplished from outside the airplane. The FAA invites comments on this alternative inspection procedure.

Long-Term FAA Actions

As the background portion of this preamble states, the problem of airplane ground deicing/anti-icing is much broader than just the issue of the last-minute decision of a pilot in command on whether to attempt a takeoff. Airport and air traffic control procedures, airplane design, and other areas have been addressed in NTSB recommendations and were addressed at the Reston Conference. The FAA and the aviation industry are continuing their efforts to address these related issues. Efforts is some areas, such as airport and air traffic control procedures, are already underway and will continue concurrently with this rulemaking. Other efforts, such as potential design changes that require long-term research, will be undertaken, either by the FAA or as joint government/industry projects, subject to available funding.

This rulemaking, when implemented, will ensure that he FAA and part 121 certificate holders have taken every practical step possible to improve safety in icing conditions before the 1992/1993 winter season. In this regard, the FAA is aware that part 121 certificate holders have already, under the leadership of the ATA, taken steps to develop a standard model industry program that would meet the goals of this rulemaking.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under the following:

DOT No: ___

OMB No: New.

Administration: FAA.

Title: Aircraft Ground Deicing and Anti-icing Program.

Need for Information: If adopted this NPRM requires each part 121 air carrier certificate holder develop an FAA approved ground deicing/anti-icing program.

Proposed Use of this Information: The FAA requires this information to evaluate each certificate holders proposed program and ensure certificate holders are operating at the highest possible level of safety during ground icing conditions.

Frequency: One-time.

Burden Estimate: 7616 total hours.

Respondents: Part 121 certificate holders.

Forms(s): None.

Average Burden Hours per Respondent: 144.

For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735 or the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Office for the FAA, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. It is requested that the comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information that this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Costs

For those elements of the proposed rule for which the FAA was able to estimate costs, the total present value cost of the proposed rule was estimated to be $38.6 million. Of this total, the 31 large part 121 air carriers, or those that own or operate more than nine airplanes, would incur present value costs of $37.8 million. The 22 small part 121 carriers would incur present value costs of $710,000. The present value cost associated with the purchase and operating of deicing equipment is $18.5 million. Approximately $18.0 million of this total would be incurred by large part 121 air carriers and $508,000 would be incurred by small part 121 air carriers. About $18.5 million of the total present value cost representing 48 percent of the estimated total would occur the first year.

To more accurately determine the total cost impact of this proposed rule, the FAA solicits comment on the following items.

1. Initially the change in procedures may add to delays already experienced during ground icing conditions. The FAA is uncertain as to the magnitude of such delays and seeks comment on this issue, including any methodology that could be used to measure this variable. Examples of information that would be of value include, but are not limited to, the following:

- The difference in delays that air carriers experience when using Type 1 and Type 2 fluids.
- The added time and associated cost (at various airports) to return for a second deicing (including the number of airplanes that have been delayed due to coming back for an additional or second deicing).
- The secondary effect of delays on the flow of air traffic. This includes airplanes waiting in queue to land or takeoff at the affected airport as well as on operators at other connecting hubs.

2. Initial deicing will occur at the gate or at a central deicing station. The FAA seeks comment on the way airlines would perform deicing and additional deicing under the proposed rule.

3. There may be a switch to Type 2 fluids in later years to allow for longer holdover times. The FAA seeks comment on the likelihood that Type 2 fluids will replace Type 1 fluids in the future.

4. Part 121 air carriers will also incur costs at foreign airports where icing conditions may occur. What is the extent of icing at these airports, and how much will it cost to comply with the proposed rule?

Delay Costs

This section on delay costs is divided into two parts. Part I is an explanatory overview on the availability of delay data to the FAA. Part II describes a methodology that could be employed to measure potential incremental delay costs.

Part I—Availability of Delay Data

Air traffic control (ATC) personnel throughout the U.S. gather information daily required by the FAA. That information includes, among others, how many flights were delayed more than 15 minutes and the reasons for those delays. Data is collected for use in reports to Congress, reports to users of the National Airspace System, and for statistical purposes. FAA Order 6040.15B, the National Airspace Performance Reporting System, sets forth requirements and procedures as guidance for reporting interruptions to facilities and services in the National Airspace System. It requires that interruptions be reported in a uniform manner using standard definitions, criteria, procedures, and terminology. In addition, this order establishes requirements and procedures for reporting air traffic delays and air traffic counts. These delays result from the Air Traffic Control System detaining an aircraft at the gate, short of the runway, on the runway, on a taxiway and/or in a holding configuration en route. This Order defines weather related delays as delays to aircraft resulting from weather conditions which result in arrival, departure and/or en route delays. It defines weather related delays due to snow and ice as "poor or nil braking action because of snow or ice on runways, snow removal operations, and runways closed by snow." The definition does not include contamination of aircraft surfaces.

The FAA Office of Air Traffic System Management generated a computer database of air carrier departure delays reportedly due to snow and ice for the period June 1990 to May 1992. Between June 1, 1990, and May 31, 1991, and between June 1, 1991, and May 31, 1992, there were a total of 2,068 delays and 1,194 such delays, respectively. However, as the samples below demonstrate "snow and ice" delays are not related to delays attributable to contamination of aircraft surfaces.

The FAA examined the time period surrounding two icing related accidents to determine if delays due to snow and ice were reported during that time. The first accident occurred at Cleveland-Hopkins International Airport on February 17, 1991 at 12:13 a.m. No weather delays (for snow and ice or any other conditions) were reported at Cleveland-Hopkins on this day. The second accident occurred at LaGuardia International Airport on March 22, 1992, about 9:30 p.m. (Although the NTSB has not made a finding in this accident, we know that LaGuardia had experienced some periods of snow during that day.) There were 22 snow and ice air carrier delays reported on March 22 due to snow at LaGuardia, however, these delays occurred between 2 and 2:35 a.m. The FAA examination of the database revealed there were no snow or ice delays reported to the FAA Air Traffic Operations Management System during the time period these two accidents occurred. In other words, during two recent icing accidents, there were no delays attributed to snow and ice. Accordingly, the FAA concludes that snow and ice delays as reported pursuant to FAA Order 6040.15B do not correlate with ground icing conditions on critical aircraft surfaces. Further, given reliable data showing those delays due to contamination of aircraft surfaces, the FAA would still find it difficult to distinguish between those delays that would normally occur under the present rule and those that might occur under the proposed rule.

Part II—Delay Cost Methodology

As stated above, whether there are any delays resulting from the proposed rule cannot be reliably estimated at this time. In order to estimate potential delay costs, several prerequisite variables would have to be examined. The following is a general step-by-step procedure to estimate potential delay costs:

Step 1. Determine the total number of severe winter weather delays that take place, primarily between November and March.

Step 2. Adjust downward the number of delays caused by severe winter weather, by subtracting those delays that would not result from ice, snow, or frost. An example of delays to be subtracted from the total would be those delays due to weather where the airport was closed.

Step 3. The result is the number of flights potentially delayed by the proposed rule. Some flights will need a pretakeoff inspection, which could delay takeoff. If no ice is found, the delay would be, at most, the time taken to make the pretakeoff inspection. If ice is found, the aircraft must be re-deiced. No delay attributed to the proposed rule would occur where pretakeoff inspections show the presence of ice. Under the existing rule, the airplane is currently not allowed to takeoff if there is ice on the critical surfaces. The cost of returning could be attributed to the existing rule.

The remaining number of delays, which is likely to represent a low percentage of the total number of delays in the system, would be representative of the baseline to measure delays associated with this proposed rule. The FAA requests information on the incremental delay cost factor that can be used to formulate the best possible final rule.

Benefits

The FAA expects the proposed rule to generate total potential safety benefits estimated at $230 million (10 years, 1991 dollars). On a discounted basis, total potential benefits would amount to an estimated $136 million. This discounted total estimate of benefits is comprised of $125 million for significantly reducing the likelihood of ice-related accidents for passenger-carrying part 121 airplanes and $11 million for part 121 cargo airplanes. The derivation of these benefits were derived from two categories: (1) Part 121 passenger-carrying air carriers and (2) part 121 cargo-carrying air carriers. Each of these categories is discussed below.

Part 121 Passenger Carrier Benefits

Under the current rule, it is the responsibility of the pilot to decide whether ice, frost, or snow has accumulated on the structure of an airplane. This decision can be very difficult to make, especially when the airplane is sitting at the end of a runway waiting to take off during inclement weather. It is at these times that the likelihood of the pilot making the wrong decision is greatest.

Over the past 15 years, there have been five passenger-carrying air carrier accidents where ice, frost, or snow accumulations on the airplane was the primary factor. These accidents resulted in 135 fatalities and 66 serious injuries. In addition, four of the airplanes were destroyed and the other sustained substantial damage.

Based on estimated historical accident and casualty rates, the FAA expects

that over the next 10 years, approximately 4 accidents will occur, with 131 fatalities and 64 serious injuries. The present value dollar benefits of preventing these accidents and casualties, is estimated to be $166 million (discounted).

The FAA has attempted to develop a proposed rule that would be 100 percent effective in preventing all accidents by incorporating program development, training, testing, capital equipment, maintenance, etc. There is some uncertainty, however, as to how effective these components would be. It is conceivable that some aircraft could pass through the system due, in part, to human error and adverse weather conditions, thereby, reducing the effectiveness of the proposed rule. While the actual effectiveness rate would be lower than 100 percent, the FAA estimates that a rate of 75 percent rate would reflect the reality of correcting a problem that is influenced by a multitude of factors (weather, human error, etc.). Multiplying the $166 million benefits by the 75 percent effectiveness rate results in adjusted benefits of $125 million ($166 million × .75).

Part 121 Cargo Carrier Benefits

The proposed rule would also potentially reduce accidents among large part 121 cargo aircraft. Over the past eight years, there have been three accidents involving large cargo aircraft. These three accidents resulted in two fatalities and two serious injuries. Two of the aircraft were substantially damaged and one was destroyed.

Based on these rates, over the next 10 years, there would be approximately 4 accidents, 3 fatalities and 3 serious injuries. The estimated value of these potential cargo accidents would be $15 million (discounted). Multiplying the $15 million in cargo benefits by the 75 percent effectiveness rate results in adjusted benefits of $11 million ($15 million × .75).

In conclusion, the proposed rule would enhance air carrier safety under conditions of ground icing. The proposed rule would reduce pilot error related to taking off with ice on the airframe by using holdover times and ground inspection. The proposed rule is expected to generate potential total benefits over the next ten years estimated at $136 million (discounted).

Conclusion

The FAA estimates the discounted present value cost of the proposed rule, excluding the cost of delays, is about $39 million over the next 10 years. This includes the cost of plan development, training, qualification testing, and capital expenditures. This estimate also does not include the cost of overseas operations. The FAA seeks comment on the extent of these costs.

The benefits of this proposed rule are estimated at $136 million (discounted) over the next decade. These benefits are derived from avoided accidents due to reduced risk during ground icing conditions.

The FAA did not estimate the cost of delays and overseas operations for this proposed rule. If the present value cost of delays and overseas operations is less than approximately $97 million, this proposed rule would still be cost beneficial.

International Trade Impact

The proposed rule is not expected to have a significant incremental impact on international trade. This assessment is based on the belief that while U.S. part 121 operators are expected to incur total compliance costs of $54 million (undiscounted), they would not be placed at a competitive trade disadvantage.

The average cost of an international round trip airplane ticket is approximately $650. With a potential average cost increase of 4 cents per round trip ticket representing less than one-hundredth of a percent of the total cost of a ticket (without consideration of potential delay costs), the likelihood of U.S. air carriers being placed at a competitive trade disadvantage becomes extremely remote. For a more detailed analysis, the reader is referred to the full international trade impact assessment contained in the docket.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit organizations that are independently owned and operated, and small government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires regulatory agencies to review rules that may have "a significant economic impact on a substantial number of small entities." A substantial number of small entities means a number that is not less than eleven and that is more than one-third of the small entities subject to a proposed or existing rule.

The proposed rule potentially impacts operators of an aircraft for hire with nine aircraft owned but not necessarily operated. Of the 53 active U.S. commercial domestic carriers, the FAA has identified 22 of them that own or operate nine or fewer airplanes under part 121. The FAA has determined that this is a substantial number since all 22 of these small entities are expected to be affected by the proposed rule.

To determine whether there is a significant cost impact on small part 121 operators, the annualized cost of the proposed rule must exceed the annualized cost threshold established by FAA Order 2100.14A. The threshold established by the Order for scheduled operators of aircraft for hire falls under two categories. The first category is scheduled operators whose entire fleet has a seating capacity of over 60. The cost threshold for these operators is $112,600. The second category is other scheduled operators with seating capacities less than 60. Their cost threshold is $62,900.

The FAA estimated the annualized cost of the proposed rule to an individual small operator to be $7,110. This number was derived by first summing the undiscounted costs for small operators. These costs are:

Initial Plan Development	$5,145
Initial Training	80,436
Qualification Testing	201,090
Initial Capital	289,440
Recurring Maintenance & Operating Costs	384,990
Total Undiscounted Costs	961,101

The $961,101 total cost is then divided by the 22 small operators to get the $43,686 average undiscounted cost for any single small operator. This number is then multiplied by a capital recovery factor of .16275 (10% interest rate for 10 years) to give an annualized cost of $7,110.

The $7,110 annualized cost does not exceed the $62,900 cost threshold prescribed above. Thus, the proposed rule would not impose a significant cost on a substantial number of small Part 121 operators.

Environmental Assessment

The proposed rule is a federal action that is subject to National Environmental Policy Act (NEPA). Under applicable guidelines of the President's Council on Environmental Quality and agency procedures implementing NEPA, the FAA will prepare an environmental assessment (EA) to determine the need for an environmental impact statement (EIS) or whether a finding of no significant impact (FONSI) would be appropriate. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

The FAA's preliminary review suggests that an EIS would not be required. The FAA believes that the rule will not promote significant additional use of the current Type I deicing fluid. However, the FAA invites comments on any environmental issues associated with this proposed rule, and specifically requests comments on the following: (1) Whether the proposed rule will increase the use of Type I deicing fluid, (2) whether the proposed rule will encourage the use of Type II deicing fluid, (3) the impact, if any, of using these deicing fluids on taxiways "just prior to takeoff," and (4) containment methods currently used that can be adopted to other locations on an airport.

Upon receiving public comments on these issues, the FAA will, after consideration of all relevant issues, determine the potential environmental impacts of the proposed ground deicing and anti-icing rule.

Federalism Implications

The changes proposed by this NPRM would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that the proposed amendments would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an Initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 121

Air safety, Air transportation, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 121.629 is amended by revising paragraph (b) and by adding new paragraphs (c) and (d) to read as follows:

§ 121.629 Operation in icing conditions.

* * * * *

(b) No person may take off an aircraft when frost, ice, or snow is adhering to the wings, control surfaces, propellers, engine inlets, or other critical surfaces of the aircraft or when the takeoff would not be in compliance with paragraph (c) of this section.

(c) Except as provided in paragraph (d) of this section, on or after November 1, 1992, no person may dispatch, release, or take off an aircraft any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, unless the certificate holder has an approved deicing program in its operations specifications and unless the dispatch, release, and takeoff comply with that program. The approved deicing program must include at least the following items:

(1) A detailed description of—

(i) How the certificate holder determines that conditions at an airport are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft and that ground deicing/anti-icing operational procedures must be in effect;

(ii) Who is responsible for deciding that ground deicing/anti-icing operational procedures must be in effect;

(iii) The operational procedures for implementing ground deicing/anti-icing operational procedures;

(iv) The specific duties and responsibilities of each operational position or group responsible for getting the aircraft safely airborne while ground deicing/anti-icing operational procedures are in effect.

(2) Initial and annual recurrent ground training and qualification testing for flight crewmembers and all other affected personnel (e.g., aircraft dispatchers, maintenance crews, contract personnel) concerning the specific requirements of the approved program and each person's responsibilities and duties under the approved program, specifically covering the following areas:

(i) The use of holdover times.

(ii) Aircraft deicing/anti-icing inspection procedures and responsibilities.

(iii) Communications procedures.

(iv) Aircraft surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and how contamination adversely affects aircraft performance and flight characteristics.

(v) Types and characteristics of deicing/anti-icing fluids.

(vi) Cold weather preflight inspection procedures.

(vii) Techniques for recognizing contamination on the aircraft.

(3) The certificate holder's holdover times, specific to each aircraft type, and the procedures for the use of these times by the certificate holder's personnel. Holdover time is the estimated time the application of deicing or anti-icing fluid will prevent the adherence of frost, ice, or snow on the treated surfaces of an aircraft. Holdover time begins when aircraft ground deicing/anti-icing commences and expires when the deicing/anti-icing fluid applied to the aircraft wings, control surfaces, propellers, engine inlets, and other critical surfaces loses its effectiveness. The holdover times must be supported by data acceptable to the Administrator. The certificate holder's program must include procedures for flight crewmembers to increase or decrease the determined holdover time in changing conditions. The program must provide that takeoff after the expiration of any holdover time is permitted only when at least one of the following conditions exists:

(i) A pretakeoff inspection, as defined in paragraph (c)(4) of this section, determines that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, or snow.

(ii) It is otherwise determined by an alternate procedure approved by the Administrator in accordance with the certificate holder's approved program that the wings, control surfaces, propellers, engine inlets, and other

critical surfaces are free of frost, ice, or snow.

(iii) The wings, control surfaces, propellers, engine inlets, and other critical surfaces are redeiced and a new holdover time is determined.

(4) Aircraft deicing/anti-icing inspection procedures and responsibilities and pretakeoff inspection procedures and responsibilities for use when a holdover time has been exceeded. A pretakeoff inspection is an inspection of the wings, control surfaces, propellers, engine inlets, and other critical surfaces conducted within five minutes prior to implementing takeoff. This inspection must be accomplished from outside the aircraft unless the program specifies otherwise.

(d) A certificate holder may continue to operate under this section without a program as required in paragraph (c) of this section, if it includes in its operations specifications a requirement that, any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft, no aircraft will take off unless it has been inspected to ensure that the wings, control surfaces, propellers, engine inlets, and other critical surfaces are free of frost, ice, and snow. The inspection must occur within five minutes prior to implementing takeoff. This inspection must be accomplished from outside the aircraft.

Issued in Washington, DC on July 17, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 92-17354 Filed 7-21-92; 8:45 am]

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federal register

Thursday
July 23, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Fund Availability for FY 1992 and Program Guidelines for the Family Unification Demonstration Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-92-3445; FR-3207-N-01]

Fund Availability (NOFA) for Fiscal Year 1992, and Notice of Program Guidelines for the Family Unification Demonstration Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1992; and Notice of Program Guidelines for the Family Unification Demonstration Program.

SUMMARY: This notice announces the availability of FY 1992 budget authority for competitive awards of section 8 rental certificates under the Family Unification Demonstration Program, and also sets forth program guidelines for this demonstration program.

The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation of children from their families. The demonstration program is to be conducted in 11 States, and is to be administered by public housing agencies (PHAs) and Indian housing authorities (IHAs) (hereafter, collectively referred to as housing agencies (HAs)) under HUD's regulations governing the section 8 rental certificate program (24 CFR part 882). Applications are solicited from eligible HAs in the following 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts.

The 11 States eligible to participate in the Family Unification Demonstration Program were designated in the Conference Report accompanying the HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991; hereafter referred to as "HUD Appropriations Act for FY 1992"). (See Conference Report 102–226, September 27, 1992, at pg. 24.)

This NOFA contains information for HAs in the 11 States listed above regarding the allocation of rental certificate budget authority; the application process, including the application requirements and the deadline for filing applications; the selection criteria and the selection process.

DATES: The due date for submission of applications in response to this NOFA is September 8, 1992. Application forms may be obtained from the local HUD Field Office/Indian Programs Office. Applications must be received in the local HUD Field Office/Indian Programs Office on the due date by 3 p.m. local time.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

ADDRESSES: Interested persons are invited to submit comments regarding the current rental certificate program regulations as these regulations relate to the Family Unification Demonstration Program to Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Assisted Housing, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410–8000. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577–0123.

I. Purpose and Substantive Description

(A) Authority

The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); and the HUD-Independent Agencies Appropriations Act of 1992 (Pub. L. 102–139, approved October 28, 1991). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

(B) Background

The Family Unification Program is a demonstration program under which section 8 rental certificate assistance is provided to families for whom the lack of adequate housing is a primary factor which would result in: (1) The imminent placement of the family's child or children in out-of-home care, or (2) the delay in the discharge of the child or children to the family from out-of-home care. The purpose of the Family Unification Demonstration Program is to test the effectiveness of promoting family unification by providing housing assistance to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families. (Lack of adequate housing is defined in section II(A) of this NOFA.)

The Family Unification Demonstration Program is to be administered by HAs under HUD's current regulations for the section 8 rental certificate program (24 CFR part 882). The demonstration program funding available in FY 1992 is limited by the HUD Appropriations Act for FY 1992 to 11 States. These 11 States are identified in section I(D) of this NOFA.

(C) Allocation Amounts

(1) FY 1992 Budget Authority

Of the amounts made available by the HUD Appropriations Act for FY 1992, up to $47.7 million of budget authority for the section 8 rental certificate program is earmarked for the Family Unification Demonstration Program. This amount will support approximately 1,240 section 8 rental certificates. Table 1 of this NOFA identifies the amount of section 8 budget authority and the approximate number of rental certificates available for each eligible State.

The budget authority amounts were derived using the fair share allocation formula, which is based upon the general need for housing within each State. HUD has modified the allocations to assure that sufficient budget authority is available for each Field Office jurisdiction to support at least 20 rental certificates. HAs may not request more budget authority than the amount

allocated to the applicable Field Office. State-wide HAs may not request more budget authority for use in a Field Office jurisdiction than the amount allocated to the Field Office.

The Family Unification Demonstration Program is exempt from section 213(d) of the Housing and Community Development Act of 1974, and from 24 CFR part 791, subpart D, the HUD regulation implementing section 213(d) and various other constraints.

(2) Reallocations of Funds

The Field Office must make every reasonable effort to use the funds made available for the Family Unification Demonstration Program within its jurisdiction. However, if there are no acceptable applications submitted, it may be necessary to reallocate funds from one Field Office to another Field Office. In such cases, the following procedures shall be used:

(a) *Reallocations within the same state.* If the allocation of funds to a Field Office cannot be used within the Field Office's jurisdiction, the Regional Office must reallocate funds from that Field Office to another Field Office for use within the same state.

(b) *Reallocations between states.* If a Regional Office cannot use funds within the same State, the Regional Office should contact Headquarters for further instructions.

(D) Eligibility

The HUD Appropriations Act for FY 1992 limits participation in the FY 1992 Family Unification Demonstration Program to the following 11 States: Missouri, New York, New Jersey, California, Maryland, Michigan, Ohio, Texas, Pennsylvania, Florida, and Massachusetts. HAs in these States are invited by this notice to submit applications for rental certificates under this demonstration program.

II. Guidelines

(A) Definitions

For purposes of the Family Unification Demonstration Program:

(1) Family Unification eligible family means a family:

(a) Whom the public child welfare agency has certified is a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in the delay of discharge of a child or children to the family from out-of-home care; and

(b) Whom the HA has determined is eligible for section 8 rental certificate assistance.

(2) Lack of adequate housing means a situation in which a family:

(a) Is living in substandard housing, as defined in 24 CFR 882.219(f); or

(b) Is, or will be, involuntarily displaced from a housing unit under the circumstances described in 24 CFR 882.219(d)(2).

(3) Public child welfare agency means the public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family.

(B) HA Responsibilities

HAs are responsible for:

(1) Reviewing the section 8 waiting list to identify families that may be eligible for the Family Unification Demonstration Program, and referring the families on the section 8 waiting list to the public child welfare agency for a determination of whether the families meet the eligibility requirements described in section II(A)(1)(a) of this NOFA;

(2) Determining whether families referred by the public child welfare agency are eligible for section 8 assistance;

(3) Amending the administrative plan and equal opportunity housing plan, prior to Annual Contributions Contract (ACC) execution for Family Unification funding, to provide for issuance of rental certificates to Family Unification eligible families in a number equal to the rental certificates provided by HUD for this purpose, and providing for the opening of closed waiting lists to add applicants when necessary;

(4) Administering the rental certificate program in accordance with applicable program regulations and requirements; and

(5) To help assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, submitting with the application a certification that the HA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

The HA may not bypass its regular section 8 waiting list in administering this program. Every HA must first review its waiting list to determine if there are any families already on its waiting list who may be eligible for this program. The HA can locate families by methods which include but are not limited to: a mailing to families on the waiting list; publication of a public notice in newspapers of general circulation which identifies the eligibility criteria and which states that families already on the waiting list must indicate their interest in this special program; or through coordination with the public child welfare agency.

Any HA with a closed waiting list is required to advertise the opening of its waiting list before accepting new applicants for this demonstration program. Opening the waiting list may be limited to applications from Family Unification eligible families. However, opening the waiting list may not be limited to families who are referred by or who are current clients of the public child welfare agencies which will be participating in the demonstration program. For administrative convenience, a HA may limit the number of applications taken in response to an advertisement.

(C) Public Child Welfare Agency Responsibilities

Public child welfare agencies are responsible for:

(1) Providing written certification to the HA that a family qualifies as a Family Unification eligible family, under the eligibility requirements described in section II(A)(1)(a) of this NOFA;

(2) Establishing and implementing a system to identify Family Unification eligible families within the agency's caseload and reviewing referrals from the HA;

(3) Committing sufficient staff resources to ensure that Family Unification eligible families are identified and the certification process is completed in a timely manner; and

(4) To help assure the quality of the evaluation that HUD intends to conduct on the Family Unification Demonstration Program, submitting with the application a certification that the PCWA will agree to cooperate with and provide requested data to the HUD office having responsibility for program evaluation.

(D) Federal Preference

To participate in the Family Unification Demonstration Program, a family must be a Family Unification eligible family as defined in section II(A)(1) of this NOFA. Generally, most families eligible for the Family Unification Demonstration Program will qualify for a Federal preference. However, whenever a HA selects a family without a Federal preference for its Family Unification Demonstration Program, that family will count against the HA's 10 percent authority to select non-Federal preference holders.

(E) Section 8 Rental Certificate Assistance

The Family Unification Demonstration Program provides assistance under the section 8 rental certificate program. HAs shall administer this demonstration program in accordance with HUD's regulations governing the section 8 rental certificate program, codified at 24 CFR part 882. If section 8 assistance for a family under this demonstration is terminated, the rental certificate must be reissued to another eligible family under this demonstration.

III. Application Process

(A) Application Requirements

All the items in this section III must be included in the application submitted to the HUD Field Office/Indian Programs Office. The application must include an explanation of how the application meets, or will meet, Selection Criteria 2 and 3. The public child welfare agency serving the jurisdiction of the HA is responsible for providing the information for Selection Criterion 3, "Need for Family Unification Demonstration Program," to the HA for submission with the HA application.

(B) Selection Criteria/Ranking Factors

To provide each applicant HA with a fair and equitable opportunity to receive an award of rental certificates for the Family Unification Demonstration Program during FY 1992, Field Offices/Indian Program Offices will use the three objective selection criteria listed below to rate all applications found acceptable for further processing.

(a) Selection Criterion 1: HA Administrative Capability (30 points)

(1) *Description:* Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements. If a HA is not administering either a Rental Certificate, Rental Voucher, or Moderate Rehabilitation Program, the Field Office/Indian Programs Office will rate HA administration of the Public or Indian Housing Program. For purposes of this NOFA, a HA administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program will not be rated on the administration of its Public or Indian Housing Program. If a HA is not administering a Rental Certificate, Rental Voucher, Moderate Rehabilitation, Public Housing or Indian Housing Program, the Field Office/Indian Programs Office will assess the administrative capability of the HA based on such factors as experience of staff, support of the HA by the local government, and the HA's administrative experience with non-HUD housing programs.

(2) *Rating:* 16–30 points. The Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and failed to meet HQS at the time of the previous HA inspection; and the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under Annual Contributions Contract (ACC) for one year was at least 95% as of September 30, 1991.

1–15 points. The Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs (or public/Indian housing or other housing programs) as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS at the time of the Field Office/Indian Programs Office inspection and failed to meet HQS at the time of the previous HA inspection; *and* the leasing rate for rental vouchers and rental certificates (or occupancy rate for public/Indian housing units) under ACC for one year was at least 85 percent as of September 30, 1991.

0 points. If none of the above statements apply, assign 0 points.

(b) Selection Criterion 2: Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families (30 points)

(1) *Description:* The method the HA and the public child welfare agency will use to identify and assist Family Unification eligible families.

(2) *Rating:* 16–30 points. A letter of intent from the public child welfare agency (PCWA) indicating its commitment to provide resources and support for the program is included with the HA application. The PCWA letter of intent and other information provided is comprehensive and includes an explanation of: the method used to identify eligible families; the PCWA's certification process for eligible families; responsibilities of each agency; PCWA assistance provided to families in locating housing units; PCWA staff resources committed to the program; any past PCWA experience administering a similar program; and any past PCWA/HA cooperation in administering a similar program.

1–15 points. The information provided is general and includes a discussion of the method and process used to identify and assist eligible families.

0 points. The information provided is either not coherent or fails to include an explanation of the method and process used to identify and assist eligible families. Proposed administration of program is not consistent with program regulations.

(c) Selection Criterion 3: Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program (20 points)—

(1) *Description:* The need for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care, or in the delay of discharge of the children to the family from out-of-home care in the area to be served, as evidenced by the caseload of the public child welfare agency.

(2) *Rating:* 11–20 points. The public child welfare agency had adequately demonstrated that there is a need in the HA's jurisdiction for the Family Unification Demonstration which is not being met through existing programs. The narrative includes specific information, relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and the PCWA's past experience in obtaining housing through HUD and other sources for families lacking adequate housing.

1–10 points. The public child welfare agency has provided a general narrative describing a need for the Family Unification demonstration in the HA's jurisdiction.

0 points. There is no need, or the public child welfare agency has not adequately demonstrated the need for the number of certificates requested in the application.

(C) Application Rating and Ranking

The HUD Field Office/Indian Programs Office is responsible for rating the applications, and the Field Office is responsible for ranking and selection of applications (including applications rated by the Indian Programs Office) which will receive assistance under the Family Unification Demonstration Program.

The Field Office/Indian Programs Office will initially screen all applications, using the "Checklist for Technical Requirements" listed in Section IV(B) of this NOFA as a guide to determine if an application is complete.

The Field Office must develop a procedure for approval of applications (including applications rated by the Office of Indian Programs) in rank order until all the housing assistance budget authority is used. The Field Office may elect to approve 100 percent of the units requested, up to the maximum number of units allowed, in each top-ranked application, or approve some lower percentage of the units requested in each application (including applications from IHAs) which scores above a Field Office-determined funding cut-off.

If applications (including applications from IHAs) which score above a Field Office-determined funding cut-off are to be funded at less than 100 percent, the Field Office must apply the same percentage reduction to the number of units requested in each application.

Where a Field Office, as it funds applications in rank order, finds that it has some number of units left but not enough to fund the next fundable application in its entirety or for the minimum of 20 units, that application can be funded to the extent of the number of units available.

In the event of tie scores, the Field Office will make the selection between tied applications on the basis of the application receiving the highest score for Selection Criterion 2, Coordination between the HA and Public Child Welfare Agency to Identify and Assist Eligible Families.

If the tied applications have the same score on Criterion 2, the Field Office shall reduce the requested amount of rental certificates to partially fund each tied application. However, if the Field Office determines that partial funding will not result in a feasible sized program for a demonstration, the tie score can be broken in another objective manner approved by the Regional Public Housing Director.

HAs that do not wish to have the size of their allocation reduced may indicate in their application that they do not wish to be considered for a reduced number of rental certificates.

(D) Unacceptable Applications

Applications that fall into any of the following categories will not be processed:

(1) (a) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending;

(b) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(c) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(2) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its rental certificate, rental voucher, or moderate rehabilitation programs.

(3) The leasing rate for rental certificates and rental vouchers under ACC for at least one year is less than 75 percent.

(4) The HA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the HA to administer an additional increment of rental certificates.

(E) Application Submission Deadline

HA applications must be received by 3 p.m. local time on September 8, 1992 at the local HUD Field Office/ Indian Programs Office. Applications that are not received in the local HUD Field Office/Indian Programs Office by 3:00 p.m. local time on that date will not be considered. HAs should contact the local HUD Field Office/Indian Programs Office for the exact address and room number where the application must be received by HUD.

Form HUD–52515 may be obtained from the local HUD Field Office/Indian Programs Office. (Only an original application should be submitted. It is not necessary to submit copies of the application.) To assist HAs, the following are attached to this notice: Form HUD 52515 [Attachment 1]; Certification for a Drug-Free Workplace [Attachment 2]; Text for the Certification Regarding Lobbying [Attachment 3]; and Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4].

(F) Corrections to Incomplete Applications

To be eligible for processing, an application must be received by the Field Office/Indian Programs Office no later than the application submission deadline date and time specified in this notice. The Field Office/Indian Programs Office will screen all applications and notify HAs of technical deficiencies by letter. Allowable corrections relate only to technical items, as determined by HUD, which do not improve the substantive quality of the application relative to the ranking factors.

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency. Information received after 3:00 p.m. local time on the fourteenth calendar day of the correction period will not be accepted and the application will be rejected as being incomplete.

All HAs are encouraged to review the "Checklist for Technical Requirements" provided in Section IV of this NOFA. The checklist identifies all technical requirements needed for application processing. A HA application that does not comply with the requirements of 24 CFR 882.204(a) and this notice, including the drug-free workplace certification and the anti-lobbying certification disclosure requirements, after the 14-day technical deficiency correction period, will be rejected.

(G) Local Government Comments

The Field Office will obtain section 213 comments, in accordance with 24 CFR part 791, subpart C, from the unit of general local government. Comments submitted by the unit of general local government must be considered before an application can be approved.

Section 213 comments submitted by units of general local government that have approved Comprehensive Housing Affordability Strategies (CHASs) should address how the HA application for rental certificates relates to the local government's CHAS, and should include comments on the household types which the HA proposes to serve (i.e., family, large-family).

IV. Checklist of Application Submission Requirements

(A) Forms and Certification Statements

The following describes basic forms and certifications required to be submitted with the application.

(1) Form HUD–52515

An Application for Existing Housing, Form HUD–52515, must be completed in accordance with the rental certificate program regulations. A copy of Form HUD 52515 is attached to this notice (Attachment 1), and can also be obtained from the local HUD Field Office/Indian Program Office.

(2) Certification Regarding Drug-Free Workplace

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with CFR part 24, subpart F (see attached Certificate for Drug Free Workplace, Attachment 2).

(3) Certification Regarding Lobbying

Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The Department's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To comply with 24 CFR 87.110, any PHA submitting an application under this announcement for more than $100,000 of budget authority must submit a certification and, if warranted, a Disclosure of Lobbying Activities. To assist HAs, the text for the Certification Regarding Lobbying (Attachment 3) and Standard Form LLL, "Disclosure Form to Report Lobbying" (Attachment 4) are attached to this announcement. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(4) Evaluation Certification

A separate certification from the HA and the Public Child Welfare Agency. The certification must state that the HA and Public Child Welfare Agency agree to cooperate with HUD and provide requested data to the HUD office designated responsibility for the program evaluation.

(B) Checklist for Technical Requirements

The checklist for technical requirements provided in this Section IV(B) specifies the information that must be included in the application. HAs are encouraged to review the checklist to ensure that the application submitted is complete.

HA		Field office		
Yes	No	Yes	No	
____	____	____	____	The application contains a completed Form HUD–52515.
____	____	____	____	The application specifies the total number of rental certificates, by number of bedrooms, requested by the HA.
____	____	____	____	The application contains estimates of the average adjusted income for prospective participants for each bedroom size.
____	____	____	____	The application demonstrates that the applicant qualifies as a public housing agency and is legally qualified and authorized to participate in the rental assistance programs for the area in which the program is to be carried out. Such demonstration includes (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operations, and (iii) a supporting opinion from the agency counsel. If such documents are currently on file in the field office they do not have to be resubmitted.
____	____	____	____	The application includes a statement that the housing quality standards to be used in the operation of the program will be as set forth in 24 CFR 882.109 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.
____	____	____	____	The application contains the HA schedule of leasing which must provide for the expeditious leasing of units. In developing the schedule, a HA must specify the number of units that are expected to be leased at the end of each three-month interval. The schedule must project lease-up by eligible families within twelve months or sooner after execution of the ACC by HUD.
____	____	____	____	The application contains a narrative explaining how the application meets Selection Criterion 2, Coordination Between HA and Public Child Welfare Agency to Identify and Assist Eligible Families.
____	____	____	____	The application contains the Public Child Welfare Agency Statement of Need for Family Unification Demonstration Program, Selection Criterion 3.
____	____	____	____	The application meets HUD's drug-free workplace requirements set out at 24 CFR part 24, subpart F (the application contains an executed Certification for a Drug-Free Workplace (Attachment 2)).
____	____	____	____	The application meets HUD's regulation regarding anti-lobbying set out at 24 CFR part 87. The anti-lobbying requirements apply to applications that, if approved, would result in the HA obtaining more than $100,000 in budget authority. To comply, HAs must submit an Anti-lobbying Certification (Attachment 3) and, if warranted, a Disclosure of Lobbying Activities (Attachment 4).
____	____	____	____	The application contains an evaluation certification from the HA.
____	____	____	____	The application contains an evaluation certification from the PCWA.

V. Funding Award Process

In accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. HUD and recipients of awards under this NOFA also shall comply with the provisions of Section VI(D) of this NOFA.

Assistance provided under the section 8 existing housing program is generally categorically excluded from environmental assessment under the National Environmental Policy Act (42 U.S.C. 4332) (see 24 CFR 50.21(d)). However, where assistance provided under this NOFA is used by the recipient for project-based certificate assistance under 24 CFR part 882, subpart G, HUD will perform an environmental review to the extent required by 24 CFR 882.713 before the recipient enters into an agreement with the owner for such assistance.

VI. Other Matters

(A) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the

Department's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(B) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA will not alter the established roles of HUD, the States and local governments, including PHAs/IHAs.

(C) Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies contained in these guidelines may have a significant impact on the maintenance and general well-being of some families. The Family Unification Demonstration is expected to provide additional decent and sanitary housing for families, for whom, currently, a lack of adequate housing causes or threatens to cause a separation of children from their families. Since the impact on the family is considered beneficial, no further review is necessary.

(D) Accountability in the Provision of HUD Assistance

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(E) Prohibition Against Lobbying Activities

The use of funds awarded this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

(F) Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to finance assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(G) Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving an applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Authority: The Family Unification Demonstration Program is authorized by section 8(x) of the U.S. Housing Act of 1937, as added by section 553 of the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); and the HUD-Independent Appropriations Act of 1992 (Pub.

L. 102–139, approved October 28, 1991). The regulations governing the section 8 rental certificate program are codified at 24 CFR part 882.

Dated: July 17, 1992.

BILLING CODE 4210-33-M

TABLE 1

SECTION 8 RENTAL CERTIFICATE PROGRAM
FY 1992 FAMILY UNIFICATION DEMONSTRATION

STATE	HUD FIELD OFFICE	ESTIMATED UNITS	TOTAL BUDGET AUTHORITY
MASSACHUSETTS	BOSTON, MASSACHUSETTS OFFICE	63	3,168,395
NEW YORK	BUFFALO, NEW YORK OFFICE	69	2,204,380
	NEW YORK, NEW YORK OFFICE	193	8,575,045
	NY TOTALS	262	10,779,425
NEW JERSEY	NEWARK, NEW JERSEY OFFICE	59	2,844,455
PENNSYLVANIA	PHILADELPHIA, PENNSYLVANIA OFFICE	62	2,182,645
	PITTSBURGH, PENNSYLVANIA OFFICE	40	1,197,550
	PA TOTALS	102	3,380,195
MARYLAND	BALTIMORE, MARYLAND OFFICE	28	1,029,885
	WASHINGTON D.C. OFFICE	20	1,084,320
	TOTALS	48	2,114,205
FLORIDA	JACKSONVILLE, FLORIDA OFFICE	76	2,559,430
OHIO	CINCINNATI, OHIO OFFICE	21	597,020
	CLEVELAND, OHIO OFFICE	46	1,339,445
	COLUMBUS, OHIO OFFICE	33	894,770
	OH TOTALS	100	2,831,235

TABLE 1 continued

MICHIGAN	DETROIT, MICHIGAN OFFICE	39	1,274,830
	GRAND RAPIDS, MICHIGAN OFFICE	34	980,015
	MI TOTALS	73	2,254,845
TEXAS	FORTH WORTH, TEXAS OFFICE	69	1,879,685
	HOUSTON, TEXAS OFFICE	34	989,990
	SAN ANTONIO, TEXAS OFFICE	37	1,060,920
	TX TOTALS	140	3,930,595
MISSOURI	KANSAS CITY, MISSOURI OFFICE	21	519,515
	ST. LOUIS, MISSOURI OFFICE	32	846,230
	MO TOTALS	53	1,365,745
CALIFORNIA	LOS ANGELES, CALIFORNIA OFFICE	154	7,784,120
	SACRAMENTO, CALIFORNIA OFFICE	21	755,580
	SAN FRANCISCO, CALIFORNIA OFFICE	80	3,936,640
	CA TOTALS	255	12,476,340
11 STATES	**GRAND TOTALS**	**1,231**	**47,704,865**

Application for Existing Housing

Section 8 Housing Assistance Payments Program

Send original and two copies of this application form and attachments to the local HUD Field Office

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

Attachment 1

OMB Approval No. 2502-0123 (exp. 3/31/92)

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for . How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application

Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count									Total Dwelling Units
	Elderly, Handicapped, Disabled			Non-Elderly						
	Efficiency	1-BR	2-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates										
Housing Vouchers										

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check √ the appropriate boxes)	Submitted with this application	Previously submitted
1. The relevant enabling legislation		
2. Any rules and regulations adopted or to be adopted by the agency to govern its operations		
3. A supporting opinion from the Public Housing Agency Counsel		

Retain this record for the term of the ACC.
Previous editions are obsolete

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

form HUD-52515

BILLING CODE 4210-33-C

Attachment 2—Certification Regarding Drug-Free Workplace Requirements (From 24 CFR, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Attachment 3—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

_____

(Name & Title)

_____

(Signature & Date)

BILLING CODE 4210-33-M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.) Attachment 4

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. **Federal Department/Agency:**	7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. **Federal Action Number**, *if known*:	9. **Award Amount**, *if known*: $
10. a. **Name and Address of Lobbying Entity** (*if individual, last name, first name, MI*):	b. **Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(*attach Continuation Sheet(s) SF-LLL-A, if necessary*)

15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only:	**Authorized for Local Reproduction** **Standard Form - LLL**

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 92-17380 Filed 7-22-92; 8:45 am]

BILLING CODE 4210-33-C

federal register

Thursday
July 23, 1992

Part IV

The President

Federal Register
Vol. 57, No. 142
Thursday, July 23, 1992

Presidential Documents

Title 3—

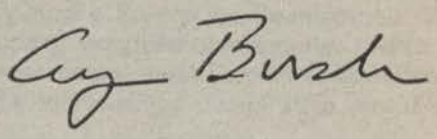
The President

Notice of July 21, 1992

Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2 and 12724 of August 9, 1990, I imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to U.S. interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
July 21, 1992.

[FR Doc. 92-17586
Filed 7-21-92; 4:07 pm]
Billing code 3915-01-M

Editorial note: For the President's message to Congress on the continuation of the emergency, see issue 30 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Proclamation 6460 of July 21, 1992

Minority Enterprise Development Week, 1992

By the President of the United States of America

A Proclamation

Adherence to the principles of independent entrepreneurship and free enterprise has long formed the bedrock of America's economic strength. By guaranteeing the freedom of individuals to engage in private industry and commerce and by permitting them to reap the fruits of their labor, the United States has provided a model of growth and progress for the world. The creative energy and genius of the American people, unfettered by excessive government intervention in the marketplace, have enabled our Nation to achieve unparalleled levels of productivity and strength.

At a time when dramatic changes in the global marketplace are presenting new challenges and opportunities for American business and industry, our Nation's continued economic progress calls for the full participation and support of all citizens, regardless of gender, race, or ethnic background. During this 10th annual observance of Minority Enterprise Development Week, we recognize that our Nation's minority business community, which includes more than 1 million minority entrepreneurs, must be part of the United States strategy to remain a leader in the increasingly competitive world economy.

Minority Americans have long recognized that freedom and equality also require economic opportunity and independence. By making the most of every opportunity and by achieving economic advancement through determination and hard work, minority business men and women have set wonderful examples for others. Such a drive to succeed offers inspiration as we strengthen our Nation's commitment to producing high quality products and services that are competitive in the global marketplace. A similar commitment to excellence underlies America 2000, our national campaign to promote learning and achievement and to ensure that every American has the knowledge and skills that are necessary to lead a full, productive life in an increasingly technological workplace.

The spirit that we celebrate during Minority Enterprise Development Week is the spirit that will lead the United States to even greater heights of prosperity and progress in the next century. It is the spirit of individuals who avail themselves of every opportunity to fulfill the American dream and who help to extend opportunities to others, thereby enriching themselves, their communities, and our country.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of September 27 through October 3, 1992, as Minority Enterprise Development Week. I encourage all Americans to observe this week with appropriate programs and activities in celebration of the achievements of minority business men and women and in recognition of the successful public-private partnerships that are leading to greater educational and economic opportunities for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of July, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-17617
Filed 7-22-92; 10:21 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 57, No. 142

Thursday, July 23, 1992

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	512-1557

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, JULY

29181-29428.....1
29429-29628.....2
29629-29782.....6
29783-30098.....7
30099-30378.....8
30379-30634.....9
30635-30896.....10
30897-31088.....13
31089-31302.....14
31303-31428.....15
31429-31628.....16
31629-31946.....17
31947-32148.....20
32149-32412.....21
32413-32684.....22
32685-32878.....23

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

51.....31947
305.....30101

3 CFR

Executive Orders:
12543 (See rule of June 29).....29424
12544 (See rule of June 29).....29424
12722 (See Notice of July 21, 1992).....32875
12724 (See Notice of July 21, 1992).....32875
12735 (See Interim rule of July 7, 1992).....31309
12803 (See Notice of June 18).....28867

Proclamations:
6352 (See USTR Notice of July 9).....30531
6428 (See Notice of July 10).....30726
6447 (See USTR Notice of July 8).....30286
6452.....29429
6453.....29625
6454.....29629
6455.....30069
6456.....30097
6457.....31627
6458.....31945
6459.....32413
6460.....32877

Administrative Orders:
Presidential Determinations:
No. 92-34 of June 22, 1992.....30099

Notices:
July 21, 1992.....32875

4 CFR

22.....31272
30.....31272

5 CFR

294.....32149
351.....32685
531.....32151
532.....29783, 30635
550.....31629
831.....29783, 32153
841.....32153
842.....32685
843.....29783
870.....29783

Proposed Rules:
351.....31332
591.....32183
831.....31333
843.....31333

7 CFR

301.....31303, 31305, 31947
318.....31306
905.....31089, 31235
916.....31090, 31235
917.....31090, 31092
946.....30379
948.....30380
971.....31631
980.....30380
981.....30382
989.....31632
1093.....31308
1096.....31635
1205.....29181, 29431
1209.....31948
1220.....29436, 31094
1430.....30987
1435.....32155
1955.....31636

Proposed Rules:
12.....29658
13.....31668
51.....29449
55.....29660, 32184
56.....29660, 32184
59.....29660, 32184
70.....29660, 32184
318.....31130
400.....30430
723.....31325
800.....31668
910.....31670
928.....31142
987.....31670
1421.....32454
1427.....32454
1703.....32184
1942.....31462

8 CFR

214.....29193, 31954
242.....30898
251.....29193
258.....29193
274a.....31954

9 CFR

77.....31429
78.....31430
96.....29784
98.....29193
122.....30898
156.....30898
327.....30635

Proposed Rules:
50.....31671
51.....29225, 31671

77.....31671
78.....31671
92.....31671
124.....30926
145.....31563
147.....31563
160.....30432
161.....30432
162.....30432
317.....31972
381.....31972

10 CFR

50.....30383
170.....32691
171.....32691
707.....32652

Proposed Rules:

61.....32743
605.....30171
707.....32664
1706.....31143

11 CFR

102.....31424

12 CFR

4.....32415
225.....30387
603.....32420
1102.....31645
1620.....32393

Proposed Rules:

Ch. I.....31336
6.....29808
19.....29808
34.....31594
Ch. II.....31336
206.....31974
208.....29226, 31594
225.....31594
263.....29226
Ch. III.....31336
308.....29662
325.....29662
333.....30433
362.....30435
365.....31594
563.....31336, 31594
565.....29826, 31404
607.....31673
618.....31673
625.....31463

13 CFR

101.....30391

14 CFR

21.....31957
23.....31957
39.....29194–29201, 29785, 30111, 30113, 30392–30534, 31096, 31104, 31431–31443, 31654, 31959
71.....30115, 30637–30818, 31960, 31961, 00000
91.....30818
97.....29442, 29443, 32722, 32724
121.....31275

Proposed Rules:

21.....31986
29.....31986
39.....29450–29453, 29681–29684, 29785, 30173, 30176, 30686, 30700, 31341, 31754, 31989, 31992, 32744–32747
61.....32680
71.....29454, 29455, 29686, 29687, 30178, 30179, 30702, 30932, 31993, 32749
121.....32846

15 CFR

6.....30115
771.....30899, 31658
774.....30899
785.....31658
799.....31309
906.....31444
907.....31445
928.....31105
932.....31105
945.....31660

Proposed Rules:

921.....31926
922.....31150

16 CFR

Proposed Rules:

1204.....31467
1205.....31155

17 CFR

140.....29203
145.....29203, 31563
240.....31445, 32159
249.....32159
250.....31120

Proposed Rules:

150.....31674
229.....29582, 31156
230.....32458, 32461
239.....32461
240.....29564, 29582, 32461
249.....29564, 32461
250.....31156

18 CFR

157.....29631
271.....31123

19 CFR

4.....29633, 29634
10.....30638
162.....30639, 31754
353.....30900
355.....30900

Proposed Rules:

101.....31677
133.....30703

20 CFR

404.....30116
655.....29203, 30640

Proposed Rules:

416.....29244

21 CFR

2.....29353
5.....29353
10.....29353
73.....32174
176.....31312
177.....32421
178.....32421
310.....29353
314.....29353
320.....29353
443.....29353
510.....30641, 31313, 32175
520.....32175
524.....31314
558.....35176
807.....29354
1308.....31126, 32423

Proposed Rules:

Ch. I.....32185
5.....32750
20.....32750
101.....32058, 32750, 32751
131.....32470
Ch. III.....31160
356.....30534
821.....31754

22 CFR

41.....31446
121.....32148

23 CFR

Proposed Rules:

140.....31467
650.....29689
750.....31470

24 CFR

25.....31048, 31754
50.....32106
201.....30394
202.....31048, 31754
219.....32398
574.....32106
905.....31962
906.....31962

25 CFR

Proposed Rules:

515.....30346, 30353
519.....30346
522.....30346
523.....30346
524.....30346
556.....30346
558.....30346
571.....30384
573.....30384
575.....30384
577.....30384

26 CFR

1.....31754
48.....32424
602.....32424

Proposed Rules:

1.....29246, 29851, 30451, 31344
301.....29248, 32472, 32473

27 CFR

5.....31126
19.....32176
47.....29787
179.....29787

Proposed Rules:

4.....29456
20.....29763

28 CFR

0.....30395, 31314, 32438
20.....31315
44.....30397

29 CFR

20.....31450
507.....29203, 30640
571.....31563
1425.....30397
1910.....29204–29206
2610.....31318
2619.....31319
2622.....31318
2644.....31320
2676.....31321

30 CFR

946.....29788
950.....30121

Proposed Rules:

48.....29853
75.....29853
77.....29853
202.....31471
914.....31161, 31162
935.....31163

31 CFR

550.....29424

32 CFR

165.....29619
169a.....29206
290.....30904
385.....32178
706.....31451, 31452

Proposed Rules:

165.....29618
516.....31852

33 CFR

81.....29218
100.....30403, 30641, 30644
117.....30403, 30647
155.....29354
161.....31660
165.....30405, 30648, 31322, 31453, 31663
402.....30904

Proposed Rules:

100.....30704
110.....31471
117.....30451, 30647
165.....31472
168.....30058
334.....32474

34 CFR

74.....30328
75.....30328
76.....30328
77.....30328
237.....30328
263.....30328
300.....30328
356.....30328
562.....30328
630.....30328
653.....30328
654.....30328
674.....32342
675.....32342
676.....32342
762.....30328

Proposed Rules:

366.....30866
668.....30826

35 CFR

Proposed Rules:

133.....32187

36 CFR

7.....29794

327.....29218

37 CFR

1.....29634, 32439
2.....29634
3.....29634

Proposed Rules:

1.....29248, 31344
10.....29248

38 CFR

0.....31006
1.....31006
2.....31006
3.....31006
4.....31006
6.....31006
8.....31006
9.....31006
10.....31006
11.....31006
12.....31006
13.....31006
14.....31006
16.....31006
17.....31006
18.....31006
18a.....31006
18b.....31006
21.....31006
36.....31006, 31323
39.....31006
41.....31006
43.....31006
44.....31006
45.....29798

Proposed Rules:

3.....30707

39 CFR

20.....30651
111.....30794
233.....32726
601.....31128

Proposed Rules:

111.....32188, 32475
3001.....31346

40 CFR

51.....32314
52.....32314
60.....29649, 30654, 32314
61.....29649
70.....32250
82.....31242
86.....30054, 30656, 31888
124.....30656
141.....31776
142.....31776
148.....31962
164.....30656
180.....30132, 31324, 31454, 32440
185.....32440
261.....29220, 30657
265.....30657
271.....29446, 30905, 32726
712.....30771
716.....30771
721.....31325, 31963, 32441

Proposed Rules:

Ch. I.....30708, 31473
25.....31164
52.....31477, 31678, 32191
72.....29940
73.....29940
80.....31165
122.....32475
180.....30132, 30454, 31346, 31479, 32753
185.....32753
186.....32753
260.....31164
261.....31164
262.....31164
264.....31164
268.....31164
300.....30452

41 CFR

50-201.....31566
101-45.....29804, 32446

Proposed Rules:

572.....31481

42 CFR

Ch. I.....32447
60.....30534
493.....31664

Proposed Rules:

412.....30301
413.....30301

43 CFR

2740.....32730
3260.....29650
4700.....29651

Proposed Rules:

3160.....32756

Public Land Orders:

6932.....31404
6936.....32180
6937.....32180

44 CFR

67.....32734

Proposed Rules:

81.....32192
206.....29854
362.....30455

45 CFR

201.....30407
204.....30407
205.....30132, 30407
206.....30132
232.....30132, 30407
233.....30132, 30407
234.....30132
237.....30132
301.....30407
302.....30658
303.....29763, 30658, 31235
801.....32447
1355.....30407

Proposed Rules:

96.....31682

46 CFR

16.....31274

Proposed Rules:

174.....32624
586.....29259, 30182

47 CFR

1.....32180
73.....29654, 29655, 29805, 29806, 31664, 31665, 31970, 31971
90.....32448, 32450
97.....32735

Proposed Rules:

22.....29260, 30189
65.....31994
69.....31994
73.....29691, 29805, 29806, 31691, 31692, 31996, 32499
97.....30456

48 CFR

223.....32736
252.....32736
909.....32674
923.....32674
970.....32674
1804.....30908
1834.....30909
1852.....30908
Ch. 20.....29220

Proposed Rules:

31.....32768
52.....32768
223.....32769
228.....29269
232.....29269
252.....29269, 32769
1832.....30933
1852.....30933

49 CFR

107.....30620
171.....30620
199.....31279
214.....29561, 30429
219.....31278
245.....30596
383.....31454
391.....31277, 31458
571.....30161, 30911, 30917, 31563, 32738
586.....30917
Ch. VI.....30880
1109.....32451
1201.....31754

Proposed Rules:

71.....29270
396.....29457
552.....29459, 31348
571.....30189
1037.....31488
1039.....30709, 31489
1180.....31165, 31693

50 CFR

17.....30164
260.....30923
285.....29655
630.....29447, 32453
649.....30684
658.....29447
661.....31666, 32741
663.....32181
672.....29222, 29223, 29806, 30168, 30685, 30924, 31331, 31971, 32453
675.....29223, 29656, 29806, 29807, 30924, 31129

Proposed Rules:

14.....30457
16.....29856
17.....30191, 31168
20.....30884
217.....30196, 30709
222.....30709
227.....30196, 30709
611.....29692, 29856
603.....30458
663.....30534, 32499
672.....31563
675.....31563
678.....29859
685.....29692

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H.R. 5412/P.L. 102-322

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S.J. Res. 324/P.L. 102-323

To commend the NASA Langley Research Center on the celebration of its 75th anniversary on July 17, 1992. (July 20, 1992; 106 Stat. 445; 2 pages) Price: $1.00

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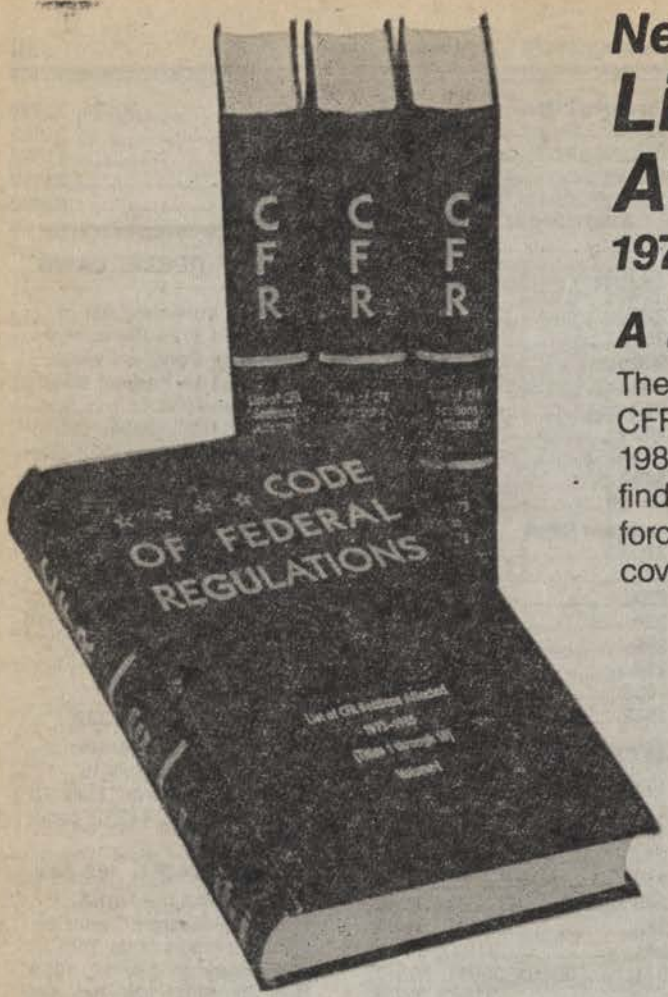

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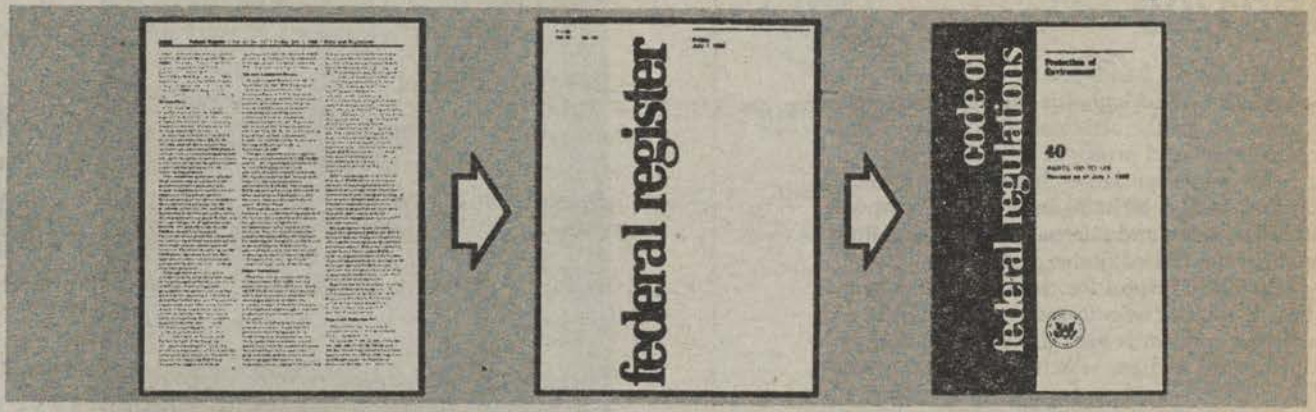

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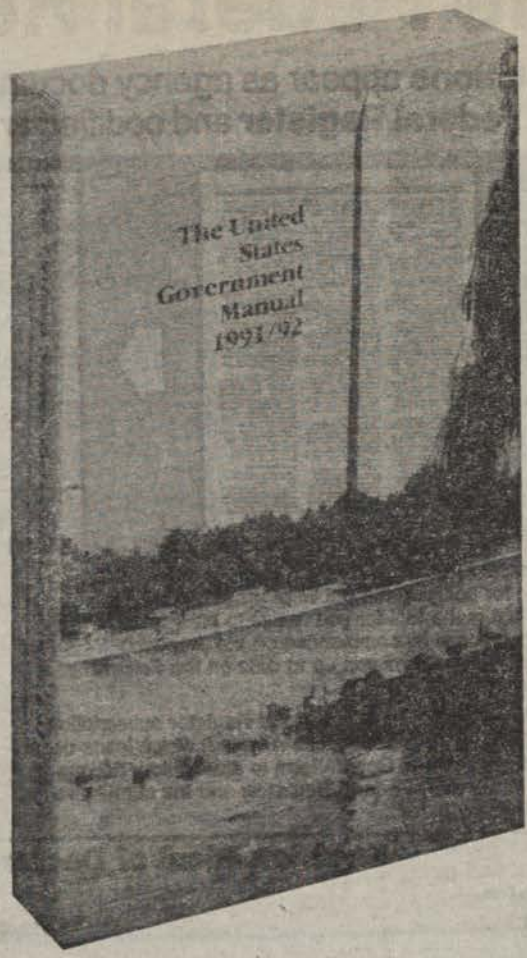

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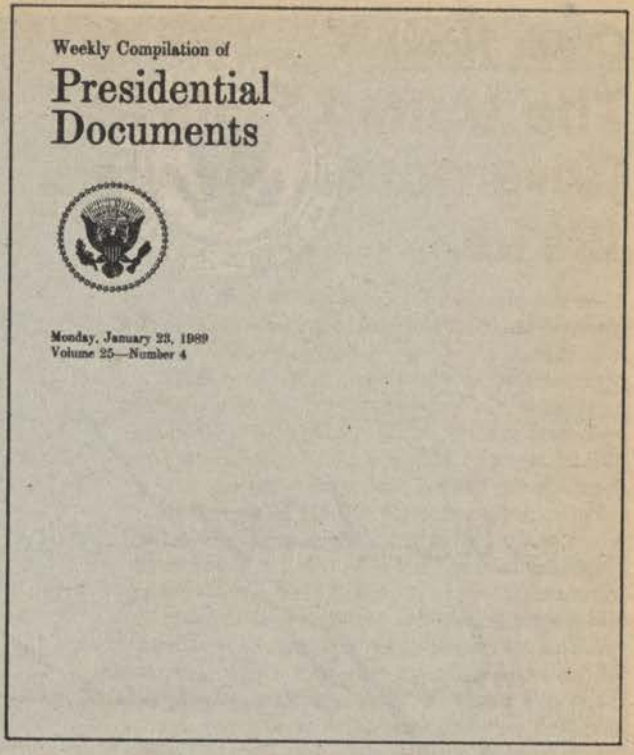

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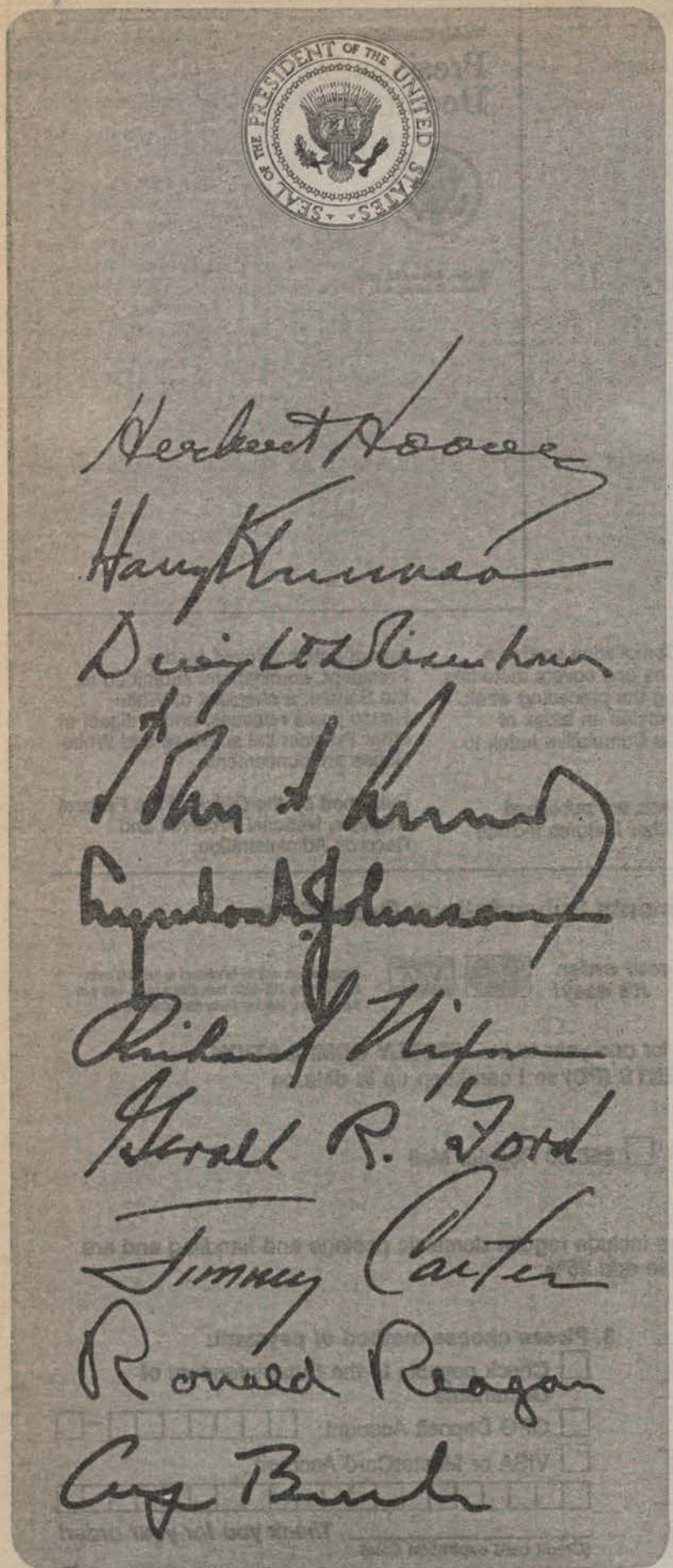

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